Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
AT&T CORP.,	)	
	)	Docket No. 17-56
Complainant	)	
	)	Bureau ID No. EB-07-MD-001
vs.	)	
	)	
IOWA NETWORK SERVICES, INC., d/b/a AUREON NETWORK SERVICES	)	
	)	
Defendant.	)	

IOWA NETWORK SERVICES, INC. d/b/a AUREON NETWORK SERVICES ANSWER TO THE FORMAL COMPLAINT OF AT&T CORP.

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IOWA NETWORK SERVICES, INC. d/b/a AUREON NETWORK SERVICES ANSWER TO THE FORMAL COMPLAINT OF AT&T CORP.

Iowa Network Services, Inc. d/b/a Aureon Network Services ("Aureon"), by and through its undersigned attorneys and pursuant to 47 C.F.R. § 1.724, hereby submits its Answer in response to the Formal Complaint filed by AT&T Corp. ("AT&T") in the above-captioned proceeding. As further detailed below, Aureon responds to the specific numbered Paragraphs of AT&T's Formal Complaint, and further provides its legal analysis of the Formal Complaint in a separate exhibit. Any factual assertions or characterizations by AT&T that are not specifically addressed by Aureon are denied.

I. RESPONSE TO AT&T'S FORMAL COMPLAINT

Pursuant to 47 C.F.R. § 1.724(b) and (c), Aureon answers AT&T's Formal Complaint, paragraph by paragraph, as follows:

1. Aureon admits that AT&T is the Complainant in this matter and that AT&T has brought the Formal Complaint to which this Answer responds, but denies that Aureon has violated

the Communications Act for the reasons given in this Answer and its accompanying Legal Analysis and supporting papers.

2. Aureon denies the allegations in this paragraph. Aureon has lawfully billed AT&T the rates contained in a lawful tariff for centralized equal access ("CEA") service and in compliance with the Commission's rules and the Communications Act. Aureon Legal Analysis, Part VI. The majority of this dispute involves terminating CEA traffic, and AT&T's failure to pay the lawful tariff rate for CEA service. The Commission authorized CEA service for both originating and terminating traffic. Aureon Legal Analysis, Part III. CEA service for terminating traffic has made it economical for AT&T's smaller competitors to provide service to rural Iowa. Rather than incurring the substantial cost of constructing transport facilities to each rural Iowa local exchange, smaller carriers and new market entrants are able to connect with the CEA network at a single location in order to terminate their customers' calls to all the exchanges of more than 200 rural local exchange carriers ("LECs") listed in the CEA tariff. F. Hilton Decl. ¶¶ 3, 6. CEA service also makes it efficient and attractive for carriers to compete with AT&T in rural areas by charging a non-distance-sensitive CEA transport rate that is the same charge whether an interstate call is transported 101 miles (i.e., the average distance on the CEA network) or 10 miles. Furthermore, in order to ensure an affordable CEA rate that would stimulate rural competition, the Commission adopted a mandatory terminating use policy for CEA service. Although AT&T, as the monopoly provider of long distance service at the time, was already connected to all Iowa LEC end offices, the Commission determined that the CEA network would not be economically viable if it carried only the traffic of new market entrants and ordered AT&T to route its terminating traffic over the CEA network. Aureon Legal Analysis, Part I. Because Section 61.38 of the Commission's rules requires Aureon's CEA tariff rate to increase as traffic volume decreases, the

exclusion of AT&T's traffic from the CEA network would have significantly increased the CEA tariff rate for AT&T's competitors. Aureon Legal Analysis, Part VI. The Commission did not exclude conference calls or any other type of terminating traffic from the CEA mandatory terminating use policy. CEA service is defined in Aureon's tariffs, and Aureon provided CEA service, as defined in the tariffs, to AT&T for all traffic that AT&T routed over the CEA network. Aureon Legal Analysis, Part III.

3. Aureon denies the allegations in this paragraph. The costs included in the interstate CEA revenue requirement fully comply with Parts 32, 36, 64, and 69 of the Commission's rules. Aureon Legal Analysis, Part VI. Because the Commission has always classified CEA service providers as dominant carriers, Aureon has been required to calculate its CEA tariff rate in accordance with Section 61.38 of the Commission's rules, rather than the rate cap and rate parity rules adopted in the *USF/ICC Transformation Order* for non-dominant incumbent local exchange carriers ("ILECs"), and competitive local exchange carriers ("CLECs"). Aureon Legal Analysis, Part II. A dominant carrier providing CEA service is not a non-dominant CLEC or ILEC. Aureon Legal Analysis, Part II.A and B. Therefore, Aureon calculated the CEA tariff rate on the basis of cost and traffic studies in accordance with Section 61.38 of the Commission's rules, and such compliance with Section 61.38 was reasonable. F. Hilton Decl. ¶¶ 13, 17. It was also reasonable for Aureon to expect AT&T's compliance with the Commission's CEA mandatory terminating use policy. Removal of AT&T's traffic (which is now 75% of all CEA traffic) from the CEA network would seriously harm rural consumers by endangering the economic viability and affordability of the CEA network, which has made the availability of advanced services and competition with AT&T feasible in rural Iowa. *Id.* ¶¶ 14, 22. It was also reasonable for Aureon to enter into CEA participation agreements with those rural LECs (both ILECs and CLECs) that

voluntarily elected to make CEA service available to competitive interexchange carriers ("IXCs") desiring to provide service to small towns and rural areas of Iowa. The Iowa Utilities Board required Aureon to implement the mandatory terminating use policy by entering into such CEA participation agreements. Aureon Legal Analysis, Part III. Furthermore, Aureon has never engaged in access stimulation and is not a party to any access revenue sharing agreement. Aureon Legal Analysis, Part IV; F. Hilton Decl. ¶ 15.

4. Aureon denies the allegations in this paragraph. The Commission should find that Aureon properly billed AT&T the CEA tariff rates and that AT&T is obligated to pay the CEA tariff rates for all traffic that AT&T routed over the CEA network. The service that Aureon provided to AT&T was CEA service as defined in Aureon's tariffs. Aureon Legal Analysis, Part III. Furthermore, AT&T's access stimulation allegations are clearly meritless as the Commission's access stimulation rules only apply to LECs that serve end users (not to CEA providers with no end users), and Aureon is not a party to any access revenue sharing agreement – which is an essential element of access stimulation. Aureon Legal Analysis, Part IV; F. Hilton Decl. ¶ 15. Even if, *arguendo*, Aureon was engaged in access stimulation, which it is not, the Commission's rules would not require any reduction in Aureon's tariff rates. For a section 61.38 carrier engaged in access stimulation, the Commission rejected a "benchmark to the BOC rate." *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663, 17885, ¶ 687 (2011) ("*USF/ICC Transformation Order*"). Instead, a Section 61.38 carrier must reduce its tariff rates "unless the costs and demand . . . were reflected in its most recent tariff filing." *Id.* at 17884, ¶ 685. The traffic and cost studies submitted with Aureon's most recent tariff filing reflected costs and demand, including the additional facility costs and traffic on Aureon's

network resulting from access stimulation by carriers other than Aureon.[1] F. Hilton Decl. ¶ 19. Therefore, Aureon's filed tariff rates fully comply with the Commission's rules.

5. Aureon admits that Aureon billed AT&T in compliance with the CEA service tariff on file with the Commission. Aureon denies AT&T's allegation that the purpose of CEA service is limited to equal access. The Commission authorized construction of the CEA network to "speed the availability of high quality varied competitive services to small towns and rural areas." *Application of Iowa Network Access Division for Authority Pursuant to Section 214 of the Communications Act of 1934 and Section 63.01 of the Commission's rules and Regulations to Lease Transmission Facilities to Provide Access Service to Interexchange Carriers in the State of Iowa*, Memorandum Opinion, Order and Certificate, 3 FCC Rcd. 1468, 1468, ¶ 4, and 1474, ¶ 38 (1988) ("*FCC 214 Order*"), *aff'd on recon.*, 4 FCC Rcd. 2201 (1989) ("*FCC 214 Recon. Order*"). In affirming approval of the CEA network, the courts recognized that the benefits of CEA service would not be limited to equal access. *Nw. Bell Tel. Co. v. Iowa Utils. Bd.*, 477 N.W.2d 678, 681 (Iowa 1991) (noting that "the network will also offer 'modern information systems'"). Aureon also denies AT&T's allegation that CEA service was approved for only originating traffic and not for terminating traffic. CEA service for terminating traffic also enables smaller IXCs competing with AT&T to connect at a single location in order to terminate their customers' calls to all the exchanges of more than 200 LECs listed in the CEA tariff. F. Hilton Decl. ¶¶ 3, 6. If CEA service did not transport terminating traffic, smaller IXCs would have to build or lease facilities to each of the end offices of more than 200 LECs. In the Commission's words, this would be "an expensive task."[2] The Commission also mandated that AT&T route terminating traffic over the

[1] *See generally* Ex. 15, Aureon's 2016 Tariff Filing (filed June 16, 2016).

[2] *FCC 214 Order*, 3 FCC Rcd. at 1468, ¶ 3.

CEA network in order to keep the CEA tariff rate affordable for AT&T's smaller competitors. *Nw. Bell Tel. Co.*, 477 N.W.2d at 684 ("unless INS provided terminating access as well as originating access, all the costs of operating the network would have to be recovered in the provision of originating access only. Such a result would frustrate one of the main goals of the INS system since the higher costs, which would be passed along to the interexchange utilities, would deter the entry of competition . . . ."); *FCC 214 Order*, 3 FCC Rcd. at 1473, ¶ 33 ("We do not believe that the mandatory termination requirement for interstate traffic is unreasonable . . . Given the expected benefits of the network . . . the requirement that terminating interstate traffic transit the Des Moines switch does not appear to be unlawful or unreasonable"); *FCC 214 Recon. Order*, 4 FCC Rcd. at 2201, ¶¶ 2, 3 ("In reaching its decision, the Bureau determined that INAD's [Iowa Network Access Division's] inclusion of a mandatory terminating use requirement for interstate traffic was not 'unreasonable [nor would differ] substantially from the normal way access is provided, as both an originating and terminating service'" (quoting *FCC 214 Order*, 3 FCC Rcd. at 1473, ¶ 33)). Furthermore, the Commission conditioned Aureon's Section 214 certificate upon the Iowa Utilities Board's decision, which ruled that "[p]ursuant to their participation agreements with INS [Aureon], the [participating telephone companies] PTCs will be allowed to require at their option that *all* terminating traffic be routed over the INS network and INS will be allowed to charge its CEA rate for *all* such terminating traffic."[3] Aureon Legal Analysis, Part III.

6. Before Aureon is permitted to provide CEA service to a LEC's exchange, the Iowa Utilities Board requires Aureon to enter into a CEA participation agreement with that LEC. Aureon Legal Analysis, Part III. Aureon admits that both CLECs and ILECs have entered into

[3] Ex. 29, *Iowa Network Access Division*, Order Granting Rehearing for the Limited Purpose of Modification and Clarification and Denying Intervention, Docket No. RPU-88-2, 1988 Iowa PUC Lexis 1, slip op. at 4-5 (IUB Dec. 7, 1988) ("*IUB Rehearing Order*") (emphasis added).

CEA participation agreements with Aureon. The CEA tariff authorizes the provision of CEA service to any "exchange telephone company," including both ILECs and CLECs. Aureon Legal Analysis, Part III. Aureon admits that its interstate CEA minutes-of-use and interstate CEA revenue increased prior to 2011, but denies that such traffic and revenue data is relevant to this dispute. Due to the two year statute of limitations, the relevant time period for this complaint proceeding is subsequent to 2012. Aureon's traffic volume for CEA service began decreasing in 2012, and by 2016 had decreased by 1,025,042,815 minutes annually from 3,833,504,867 minutes in 2011, to 2,808,462,052 minutes in 2016 – which represents more than a 26% decline in CEA traffic volume. J. Schill Decl. at ¶ 30. There has been a corresponding significant decrease in Aureon's interstate CEA gross revenue of $11,303,912 from $31,419,869 in 2011, to $20,115,957 in 2015. *Id.* Furthermore, Aureon denies AT&T's access stimulation allegation, as the Commission's access stimulation rules only apply to LECs that serve end users (not to CEA providers with no end users), and Aureon is not a party to any access revenue sharing agreement, which is an essential element of access stimulation. Aureon Legal Analysis, Part IV; F. Hilton Decl. ¶ 15.

7. Aureon denies the allegations in this paragraph. In accordance with Section 61.38 of the Commission's rules, Aureon has reduced its CEA tariff rates as traffic volume has increased. Aureon's CEA tariff rate is calculated on the basis of the traffic volume, which AT&T contends results from access stimulation by LECs. F. Hilton Decl. ¶ 19. Aureon has not engaged in access stimulation as the Commission's access stimulation rules only apply to LECs that serve end users (not to CEA providers with no end users), and Aureon is not a party to any access revenue sharing agreement, which is an essential element of access stimulation. Aureon Legal Analysis, Part IV; F. Hilton Decl. ¶ 15. Even if, *arguendo,* Aureon was engaged in access stimulation, which it is

not, the Commission's rules would not require any reduction in Aureon's tariff rates. For a section 61.38 carrier engaged in access stimulation, the Commission rejected a "benchmark to the BOC rate." *USF/ICC Transformation Order*, 26 FCC Rcd. at 17885, ¶ 687. Instead, a Section 61.38 carrier must reduce its tariff rates "unless the costs and demand . . . were reflected in its most recent tariff filing." *Id.* at 17884, ¶ 685. The traffic and cost studies submitted with Aureon's most recent tariff filing reflected costs and demand, including the additional facility costs and traffic on Aureon's network resulting from access stimulation by carriers other than Aureon.[4] F. Hilton Decl. ¶ 19. Therefore, Aureon's filed tariff rates fully comply with the Commission's rules.

8. Aureon denies the allegations in this paragraph. Aureon has properly billed the CEA tariff rate for the traffic that AT&T has routed to the CEA network, and the CEA tariff rate is just and reasonable. Aureon Legal Analysis, Part VI. In accordance with Section 61.38 of the Commission's rules, Aureon has reduced its CEA tariff rate to reflect increases in the traffic volume, which AT&T contends results from access stimulation by LECs. F. Hilton Decl. ¶ 19. Furthermore, consumers do not subsidize CEA service because the CEA tariff rate has been calculated to generate revenue that will result in Aureon earning less than the rate of return authorized by the Commission; and Aureon does not receive any Universal Service Funds or Connect America funds for its CEA service. The CEA tariff rate is also reasonable because Aureon charges the same non-distance sensitive rate to IXCs whether an interstate call is transported 100 miles or 10 miles. Aureon Legal Analysis, Part VI.D. AT&T's share of total CEA traffic volume provided to all IXCs has increased from 48% of the total CEA traffic volume in 2013 to 75% of the total CEA traffic volume in 2016. F. Hilton Decl. ¶ 14. That sizeable increase in the traffic

[4] *See generally* Ex. 15, Aureon's 2016 Tariff Filing.

that AT&T routed to Aureon's CEA network is apparently a result of the wholesale terminating service that AT&T has sold to other IXCs.

9. Aureon denies the allegations in this paragraph. Aureon's conduct has been lawful and reasonable in every respect.

10. Aureon denies the allegations in this paragraph. The Commission did not exclude conference calls or any other type of terminating traffic from the CEA mandatory terminating use policy. The removal of terminating traffic which AT&T contends is the result of access stimulation by LECs from the CEA network would significantly increase the CEA tariff rate for AT&T's competitors because Section 61.38 of the Commission's rules requires Aureon's CEA tariff rate to increase as traffic volume decreases. Aureon Legal Analysis, Part VI. CEA service is defined in Aureon's tariffs as applicable to all types of terminating traffic, and Aureon provided CEA service, as defined in the tariffs, to AT&T for all traffic that AT&T routed over the CEA network. Aureon Legal Analysis, Part III. Therefore, Aureon has fully complied with Sections 201(b) and 203 of the Communications Act.

11. Aureon denies the allegations in this paragraph. Small IXCs competing with AT&T have the same need for CEA service for all types and volumes of terminating traffic, including the traffic that AT&T contends is the result of access stimulation by LECs. CEA service for all types and volumes of terminating traffic enables smaller IXCs competing with AT&T to connect at a single location in order to terminate their customers' calls to all the exchanges of more than 200 LECs listed in the CEA tariff. F. Hilton Decl. ¶¶ 3, 6. CEA service also makes it efficient and attractive for carriers to terminate traffic to rural areas by charging a non-distance-sensitive CEA transport rate that is the same charge whether an interstate call is transported 101 miles (i.e., the average distance on the CEA network) or 10 miles. Aureon Legal Analysis, Part VI.D. If CEA

service did not transport traffic that AT&T contends is the result of access stimulation by LECs, smaller IXCs would have to build or lease facilities to transport such terminating traffic to each of the end offices of more than 200 LECs. In the Commission's words, this would be "an expensive task."[5] The Commission also did not distinguish between types of terminating traffic in mandating that AT&T route all terminating traffic over the CEA network in order to keep the CEA tariff rate affordable for AT&T's smaller competitors. *Nw. Bell Tel. Co.*, 477 N.W.2d at 684 ("unless INS provided terminating access as well as originating access, all the costs of operating the network would have to be recovered in the provision of originating access only. Such a result would frustrate one of the main goals of the INS system since the higher costs, which would be passed along to the interexchange utilities, would deter the entry of competition"). Removal from the CEA network of all traffic which AT&T contends is the result of access stimulation by LECs would seriously harm rural consumers by endangering the economic viability and affordability of the CEA network, which has made the availability of advanced services and competition with AT&T feasible in rural Iowa. F. Hilton Decl. ¶ 22.

12. Aureon denies the allegations in this paragraph. The Commission authorized CEA service for all types of terminating traffic, including conference calls. Furthermore, the Commission did not exclude conference calls (or the traffic AT&T calls access stimulation traffic) from the Commission's CEA mandatory terminating use policy. Aureon provided CEA service, as defined in the tariffs, to AT&T for all traffic that AT&T routed over the CEA network. Aureon Legal Analysis, Part III. Therefore, Aureon has complied with the CEA tariff and the Communications Act, and AT&T is obligated to pay Aureon all amounts that Aureon has billed AT&T.

[5] *FCC 214 Order*, 3 FCC Rcd. at 1468, ¶ 3.

13. Aureon denies the allegations in this paragraph. It is completely meritless for AT&T to allege that Aureon has violated the law by requiring AT&T to route terminating traffic over the CEA network to the end offices of the subtending LECs. The CEA mandatory terminating use policy adopted by both the Commission and the Iowa Utilities Board requires such routing in order to make CEA service economically viable for AT&T's smaller IXC competitors in rural Iowa. Aureon Legal Analysis, Parts III and V. In further implementation of the CEA mandatory termination policy, the Commission adopted Section 69.112(i) expressly exempting CEA providers and the subtending LECs from the requirement to provide direct-trunked transport to AT&T.[6] In order to implement the mandatory use policy, the Iowa Utilities Board authorized Aureon to enter into traffic agreements (also known as participation agreements) requiring all traffic to subtending LEC exchanges to be routed over the CEA network. "Pursuant to their participation agreements with INS [Aureon], the [participating telephone companies] PTCs will be allowed to require at their option that *all* terminating traffic be routed over the INS network and INS will be allowed to charge its CEA rate for *all* such terminating traffic."[7] The traffic agreements, and their mandatory use provisions, are pro-competitive as they maintain the traffic volume necessary to keep the CEA tariff rate affordable for AT&T's smaller competitors, which rely upon the CEA network for traffic concentration and to reach small towns and rural areas on a non-distance-sensitive basis. CEA service has succeeded in making it attractive for fifteen IXCs to use the CEA network to originate traffic, and for seventeen IXCs to use the CEA network to

[6] *Transport Rate Structure and Pricing, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd. 7006, 7048-49, ¶ 91 (1992) ("*Transport Rate Structure Order*") ("[T]he Commission has previously approved centralized equal access arrangements with mandatory termination requirements . . . and we do not require centralized equal access providers or LECs participating in such arrangements to offer direct-trunked transport service.").

[7] Ex. 29, *IUB Rehearing Order*, 1988 Iowa PUC Lexis 1, slip op. at 5 (emphasis added).

terminate traffic. F. Hilton Decl. ¶ 3. Therefore, CEA network routing – in lieu of direct trunks to CEA subtending LECs – is lawful, and Aureon's traffic agreements with subtending LECs implementing the Commission's CEA mandatory use policy is also lawful.

14. Aureon denies the allegations in this paragraph. Aureon Legal Analysis, Part VI. Because the Commission has always classified CEA service providers as dominant carriers, Aureon has been required to calculate its CEA tariff rate in accordance with Section 61.38 of the Commission's rules, rather than the rate cap and rate parity rules adopted in the *USF/ICC Transformation Order* for non-dominant ILECs and CLECs. Aureon Legal Analysis, Part II. A dominant carrier providing CEA service is not a non-dominant CLEC or ILEC. Aureon Legal Analysis, Part II.A and B. Therefore, Aureon calculated the CEA tariff rate on the basis of cost and traffic studies in accordance with Section 61.38 of the Commission's rules, and the CEA tariff fully complies with the Commission's rules. F. Hilton Decl. ¶¶ 13, 17.

15. Aureon denies the allegations in this paragraph. AT&T's access stimulation allegations are clearly meritless, as the Commission's access stimulation rules only apply to LECs that serve end users (not to CEA providers with no end users), and Aureon is not a party to any access revenue sharing agreement, which is an essential element of access stimulation. Aureon Legal Analysis, Part IV; F. Hilton Decl. ¶ 15. Even if, *arguendo*, Aureon was engaged in access stimulation, which it is not, the Commission's rules would not require any reduction in Aureon's tariff rates. For a Section 61.38 carrier engaged in access stimulation, the Commission rejected a "benchmark to the BOC rate." *USF/ICC Transformation Order*, 26 FCC Rcd. at 17885, ¶ 687. Section 61.38 already constrains the CEA tariff rates because as traffic volume increases, the CEA tariff rate decreases. F. Hilton Decl. ¶ 19. A Section 61.38 carrier must reduce its tariff rates "unless the costs and demand . . . were reflected in its most recent tariff filing." *USF/ICC*

Transformation Order, 26 FCC Rcd. at 17884, ¶ 685. The traffic and cost studies submitted with Aureon's most recent tariff filing reflected costs and demand, including the additional facility costs and traffic on Aureon's network resulting from access stimulation by carriers other than Aureon.[8] F. Hilton Decl. ¶ 19. Therefore, Aureon's filed tariff rates fully comply with the Commission's rules.

16. Aureon denies the allegations in this paragraph. Aureon has properly calculated its CEA revenue requirement and CEA tariff rates using proper accounting methods and in accordance with the Commission's rules. J. Schill Decl. ¶ 48. Aureon utilizes the same methodology for calculating its current CEA revenue requirement that was employed with its original tariff filing, which the Commission approved after rejecting AT&T's allegation that the cost support was insufficient. J. Schill Decl. ¶ 48; *Iowa Network Access Division; Tariff F.C.C. No. 1 Transmittal Nos. 1, 6, and 10*, Order, 4 FCC Rcd. 3947, 3947, ¶¶ 4, 9-10 (1989) ("*1988 INAD Tariff Order*") ("On April 14, INAD filed Transmittal No. 10, which revised its cost data to better conform with Commission Rules . . . We find no compelling argument has been presented that the tariff filed by INAD is patently unlawful so as to require rejection or that the tariff warrants investigation at this time"). Aureon has fully disclosed its accounting and rate calculations by publicly filing with the Commission both the Commission-approved tariff review plans and detailed cost studies that comply with Section 61.38 and Parts 32, 36, 64, and 69 of the Commission's rules. Aureon's current CEA tariff rate is just and reasonable because it is calculated to generate revenue that will result in Aureon earning less than the rate of return authorized by the Commission. Legal Analysis, Part VI.D. Therefore, AT&T's demand for a different CEA tariff rate on a going forward basis is unwarranted.

[8] *See generally* Ex. 15, Aureon's 2016 Tariff Filing.

17. Aureon denies the allegations in this paragraph. The Commission should find: (i) Aureon's conduct and tariffs comply with Section 201(b) and 203 of the Communications Act; (ii) the Commission's CEA mandatory terminating use policy permits Aureon to charge its CEA tariff rates for all types of terminating traffic, including conference calls and traffic that AT&T contends is the result of access stimulation by LECs; (iii) AT&T must pay the CEA tariff rates for all traffic that AT&T routed to the CEA network; and (iv) AT&T is not entitled to retroactive damages or a prospective change to the CEA tariff rates.

18. Aureon admits that this paragraph describes how AT&T has organized its formal complaint, but denies that AT&T's formal complaint supports a finding of any wrongdoing by Aureon.

19. Aureon admits that the Commission has jurisdiction to consider AT&T's formal complaint, and that Aureon is a common carrier subject to Title II of the Communications Act.

20. Aureon admits that AT&T requests damages, but denies that AT&T is entitled to such damages because AT&T's claims fail as a matter of fact and law. Aureon also admits that AT&T has requested that any available damages be addressed after the Commission's adjudication of the liability issues.

21. Aureon admits that the cited statements, exhibits, and declarations were included in AT&T's complaint, but denies that they support a finding that Aureon has violated either the Commission's rules or the Communications Act.

22. Admitted.

23. Aureon admits that there have been communications between employees of the respective parties, but denies that AT&T has made a good faith effort to discuss the possibility of

settlement. Aureon admits that Aureon has agreed to participate in mediation by the FCC's staff and that AT&T has refused to participate in such mediation.

24. Aureon denies that the Great Lakes complaint proceeding or AT&T forbearance petition are relevant to this proceeding to the extent those other proceeding apply rules for CLECs. A CEA service provider like Aureon is not a CLEC, and CLECs are subject to different regulations than those applicable to CEA service providers. Legal Analysis, Part II.A. Furthermore, Great Lakes does not provide CEA service and is subject to its own tariff, which is completely different than Aureon's tariff for CEA service. The remainder of this paragraph is admitted.

25. Aureon admits the first sentence of this paragraph. Aureon denies that this case relates only to "AT&T's role as a purchaser of services, and not as a common carrier providing services." First, AT&T has not purchased (i.e., fully paid for) CEA service since September, 2013. Second, AT&T's obligation under Section 201(a) of the Communications Act to compensate Aureon for routing AT&T's traffic over the CEA "through route" arises from AT&T's role as a common carrier of long distance calls. Aureon Legal Analysis, Part III. All common carriers providing telecommunications services, including AT&T and Aureon, have a statutory duty to establish a physical connection with other telecommunications service providers and "to establish through routes and charges applicable thereto and the divisions of such charges." 47 U.S.C. § 201(a). The CEA network provides a "through route" between the long distance telephone networks of IXCs (e.g., AT&T), and the networks of other carriers (e.g., CLECs and ILECs) providing local telephone service. F. Hilton Decl. ¶ 8. After conducting a Section 201(a) hearing, the Commission prescribed a "division of charges" for through routes like the one that Aureon provided AT&T. Under this arrangement, AT&T offers its long distance service to the public for a fee, collects revenue from the customers that place calls, and pays a charge to connecting carriers,

such as Aureon, for the use of Aureon's facilities. As the Commission explained, "one of the carriers offers the service to the public and pays a charge to a connecting carrier for the use of the other carrier's facilities. We have used the term 'carrier's carrier' charges to describe such an arrangement." *MTS and WATS Market Structure*, Third Report and Order, 93 F.C.C.2d 241, 254 n. 15 (1983). *See also*, *Mobile Marine Radio, Inc. v. S. Cent. Bell Tel. Co*., Memorandum Opinion and Order, 63 F.C.C.2d 266, 271 n. 21 (1977). Aureon's tariff rates are the "carrier's carrier charges" that Section 201(a) requires AT&T to pay Aureon for AT&T's use of Aureon's through route.

26. Aureon denies that it provides CEA service as either an ILEC or a CLEC. Aureon is a dominant carrier providing CEA service pursuant to Section 61.38 of the Commission's rules. Legal Analysis, Part II. Aureon admits the remainder of this paragraph.

27. Aureon denies that the operations of CLECs are relevant to this complaint proceeding. CLECs do not provide CEA service and are subject to different regulations than those applicable to CEA service providers. Legal Analysis, Part II.A. Furthermore, CLECs are governed by their own separate tariffs, which contain rates and terms that are completely different than those contained in Aureon's tariffs for CEA service. Aureon does not have an access revenue sharing agreement with any CLEC, and is not responsible for the actions of such third parties. F. Hilton § 15.

28. Aureon is without knowledge or information sufficient to form a belief as to whether the listed CLECs are currently parties to an access revenue sharing agreement, which is a prerequisite under the Commission's rules for there to be access stimulation by those CLECs. Aureon Legal Analysis, Part IV. Aureon is not a party to an access revenue sharing agreement with either the listed CLECs or any other entity. F. Hilton Decl. ¶ 15.

29. Aureon denies that third party transport providers are relevant to this proceeding. This proceeding involves only the CEA service that Aureon provided to AT&T pursuant to the CEA tariffs, and AT&T's failure to pay the lawful CEA tariff rates.

30. Aureon admits that this paragraph summarizes the background section of AT&T's complaint, but denies that any portion of the complaint supports a finding that Aureon has violated either the Commission's rules or the Communications Act.

31. Aureon admits that equal access enables "1+" dialing, but denies that CEA service is limited to equal access or originating traffic. The Commission authorized construction of the CEA network to "speed the availability of high quality varied competitive services to small towns and rural areas." *FCC 214 Order*, 3 FCC Rcd. at 1468, ¶ 4, and 1474, ¶ 38. In affirming approval of the CEA network, the courts recognized that the benefits of CEA service would not be limited to equal access. *Nw. Bell Tel. Co.*, 477 N.W.2d at 681 (noting that "the network will also offer 'modern information systems'"). Aureon also denies AT&T's allegation that CEA service was approved for only originating traffic and not for terminating traffic. The Commission has recognized that CEA enables the accurate measurement of terminating traffic when the subtending LEC's end office lacks measurement and recording capabilities. *Transport Rate Structure and Pricing*, Report and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd. 7006, 7050, ¶ 94 (1992) ("*Transport Rate Structure Order*"). Furthermore, CEA service for terminating traffic enables smaller IXCs competing with AT&T to connect at a single location in order to terminate their customers' calls to all the exchanges of more than 200 LECs listed in the CEA tariff. F. Hilton Decl. ¶¶ 3, 6. If CEA service did not transport terminating traffic, smaller IXCs would have to build or lease facilities to each of the end offices of more than 200 LECs. In the Commission's words, this would be "an expensive task." *FCC 214 Order*, 3 FCC Rcd. at 1468, ¶ 3. The

Commission also mandated that AT&T route terminating traffic over the CEA network in order to keep the CEA tariff rate affordable for AT&T's smaller competitors. *Nw. Bell Tel. Co.*, 477 N.W.2d at 684 ("unless INS provided terminating access as well as originating access, all the costs of operating the network would have to be recovered in the provision of originating access only. Such a result would frustrate one of the main goals of the INS system since the higher costs, which would be passed along to the interexchange utilities, would deter the entry of competition"); *FCC 214 Order*, 3 FCC Rcd. at 1473, ¶ 33 ("We do not believe that the mandatory termination requirement for interstate traffic is unreasonable . . . Given the expected benefits of the network . . . the requirement that terminating interstate traffic transit the Des Moines switch does not appear to be unlawful or unreasonable"); *FCC 214 Recon. Order*, 4 FCC Rcd. at 2201, ¶¶ 2, 3 ("In reaching its decision, the Bureau determined that INAD's [Iowa Network Access Division's] inclusion of a mandatory terminating use requirement for interstate traffic was not 'unreasonable [nor would differ] substantially from the normal way access is provided, as both an originating and terminating service'"). Furthermore, the Commission conditioned Aureon's Section 214 certificate upon the Iowa Utilities Board's decision, which ruled that "[p]ursuant to their participation agreements with INS [Aureon], the [participating telephone companies] PTCs will be allowed to require at their option that *all* terminating traffic be routed over the INS network and INS will be allowed to charge its CEA rate for *all* such terminating traffic."[9] Aureon Legal Analysis, Part III.

32. Aureon admits that, prior to the construction of the CEA network, it was uneconomical to provide equal access or recording capabilities for terminating traffic at each rural

[9] Ex. 29, *IUB Rehearing Order*, 1988 Iowa PUC Lexis 1, slip op. at 4-5 (emphasis added).

end office, and AT&T's smaller competitors found it unattractive to compete with AT&T in either originating calls from or terminating calls to rural areas.

33. Aureon admits that one part of the objectives of CEA service included overcoming the problems of making equal access and competition available in rural areas, but denies that CEA service was designed to achieve only two limited objectives associated with originating traffic. The Commission and the Iowa Utilities Board also authorized CEA service to make advanced features and modern information services available in rural Iowa. The Commission authorized construction of the CEA network to "speed the availability of high quality varied competitive services to small towns and rural areas." *FCC 214 Order*, 3 FCC Rcd. at 1468, ¶ 4, and 1474, ¶ 38. The Iowa Utilities Board approved Aureon's CEA network because "the concentration will benefit the general public in Iowa by assuring that a substantial portion of rural Iowa will have a network in place to deliver information services."[10] In affirming approval of the CEA network, the courts recognized that the provision of modern information services was an important objective of CEA service. *Nw. Bell Tel. Co.*, 477 N.W.2d at 681 ("the network will also offer 'modern information systems'"). CEA service was also designed to make it economical for smaller IXCs to terminate calls to rural areas and facilitate competition with AT&T for terminating long distance calls to those rural areas. *Id.* at 680 (describing the CEA network as "a fiber-optic network and modern switching system that will concentrate the long-distance traffic *to and from* 135 independent, rural Iowa telephone companies") (emphasis added). CEA service for terminating traffic enables smaller IXCs competing with AT&T to connect at a single location in order to terminate their customers' calls to all the exchanges of more than 200 LECs listed in the CEA

[10] Ex. 28, *Iowa Network Access Division*, Final Decision and Order, Docket No. RPU-88-2, 1988 Iowa PUC Lexis 1, slip op. at 10 (IUB Oct. 18, 1988) ("*State Authorization*").

tariff. F. Hilton Decl. ¶¶ 3, 6. If CEA service did not transport terminating traffic, smaller IXCs would have to build or lease facilities to each of the end offices of more than 200 LECs. In the Commission's words, this would be "an expensive task." *FCC 214 Order*, 3 FCC Rcd. at 1468, ¶ 3. CEA service also makes it efficient and attractive for carriers to terminate traffic to rural areas by charging a non-distance-sensitive CEA transport rate that is the same charge whether an interstate call is transported 101 miles (i.e., the average distance on the CEA network) or 10 miles. Aureon Legal Analysis, Part VI.D. Another objective of CEA service is to provide accurate measurement of terminating traffic when a subtending LEC's end office lacks measurement and recording capabilities. *Transport Rate Structure Order*, 7 FCC Rcd. at 7050, ¶ 94.

34. Aureon admits that the quoted language is found in the cited opinions, but denies that the level of traffic volume was the primary reason that small IXCs found it uneconomical to provide service in rural Iowa. There is an important distinction between traffic volume and the number of potential customers in rural areas, both residences and businesses. Rural markets are "thin," meaning few calling or called parties are located there, and remain thin today. By providing competitive IXCs with access to a 2,700 mile CEA network without having to pay distance-sensitive interstate charges, CEA service avoids the cost of building or leasing facilities to each of hundreds of thin markets located in small towns and rural areas, and makes it attractive for numerous IXCs to compete with AT&T in the provision of both terminating service and originating service in those thin markets. F. Hilton Decl. ¶¶ 3, 10. In affirming approval of the CEA network, the courts noted that without a CEA network competition in rural Iowa "would not be economically feasible give the thinness of the market within any given PTC [participating telephone company]," and that the CEA "network will also offer 'modern information systems' to the PTC's, another feature formerly unavailable because of the thinness of the market in any single

independent, local telephone company prior to the INS collectivization." *Nw. Bell Tel. Co.*, 477 N.W.2d at 681.

35. Aureon denies that the *FCC 214 Order* states what AT&T has alleged in this paragraph. The CEA network was designed to reduce the costs of competing in rural Iowa for AT&T's smaller competitors even though it would increase costs for AT&T. In approving Aureon's CEA network, the Commission concluded that "[a]lthough the network INAD [Iowa Network Access Division] would lease will increase the cost of access, we judge that the benefits of added competition should outweigh those costs, especially in view of the comprehensive coverage of the network." *FCC 214 Order*, 3 FCC Rcd. at 1474, ¶ 38.

36. Aureon denies the allegations in this paragraph. The termination of traffic is an essential element of Aureon's CEA service. The Commission and the Iowa Utilities Board adopted a CEA mandatory terminating use policy in order to make CEA service economically viable for AT&T's smaller IXC competitors in rural Iowa.[11] Aureon Legal Analysis, Parts III and V. Removal of AT&T's traffic (which is now 75% of all CEA traffic) from the CEA network would

[11] *Nw. Bell Tel. Co.*, 477 N.W.2d at 684 ("unless INS provided terminating access as well as originating access, all the costs of operating the network would have to be recovered in the provision of originating access only. Such a result would frustrate one of the main goals of the INS system since the higher costs, which would be passed along to the interexchange utilities, would deter the entry of competition"); *FCC 214 Order*, 3 FCC Rcd. at 1473, ¶ 33 ("We do not believe that the mandatory termination requirement for interstate traffic is unreasonable . . . Given the expected benefits of the network . . . the requirement that terminating interstate traffic transit the Des Moines switch does not appear to be unlawful or unreasonable"); *FCC 214 Recon. Order*, 4 FCC Rcd. at 2201, ¶¶ 2, 3 ("In reaching its decision, the Bureau determined that INAD's [Iowa Network Access Division's] inclusion of a mandatory terminating use requirement for interstate traffic was not 'unreasonable [nor would differ] substantially from the normal way access is provided, as both an originating and terminating service'"). Furthermore, the Commission conditioned Aureon's Section 214 certificate upon the Iowa Utilities Board's decision, which ruled that "[p]ursuant to their participation agreements with INS [Aureon], the [participating telephone companies] PTCs will be allowed to require at their option that *all* terminating traffic be routed over the INS network and INS will be allowed to charge its CEA rate for *all* such terminating traffic." Ex. 29, *IUB Rehearing Order*, 1988 Iowa PUC Lexis 1, slip op. at 4-5 (emphasis added).

seriously harm rural consumers by endangering the economic viability and affordability of the CEA network, which has made the availability of advanced services and competition with AT&T feasible in rural Iowa. F. Hilton Decl. ¶¶ 14, 22. The termination of traffic over the CEA network is also a necessary component of CEA service because it enables the accurate measurement of terminating traffic when the subtending LEC's end office lacks measurement and recording capabilities. *Transport Rate Structure Order*, 7 FCC Rcd. at 7050-51, ¶¶ 87, 94 ("terminating traffic is required to go through the tandem because only the tandem, not the individual end offices, has the measurement and billing capabilities"). Furthermore, CEA service for terminating traffic enables smaller IXCs competing with AT&T to connect at a single location in order to terminate their customers' calls to all the exchanges of more than 200 LECs listed in the CEA tariff. F. Hilton Decl. ¶¶ 3, 6. If CEA service did not transport terminating traffic, smaller IXCs would have to build or lease facilities to each of the end offices of more than 200 LECs. In the Commission's words, this would be "an expensive task." *FCC 214 Order*, 3 FCC Rcd. at 1468, ¶ 3. Aureon admits that AT&T quotes from a Commission decision relating to CEA service in Minnesota, which dealt with a network, tariff, and jurisdiction that is irrelevant to this dispute. This dispute requires application of the Commission and court decisions and Aureon tariffs governing the termination of traffic over the comprehensive, more than 2,700 mile CEA network in Iowa.

37. Admitted.

38. Admitted.

39. Aureon admits that interstate CEA minutes-of-use increased prior to 2012, but denies that such traffic and revenue data is relevant to this dispute. Due to the two-year statute of limitations, the relevant time period for this complaint proceeding is subsequent to 2012. Aureon's traffic volume for CEA service began decreasing in 2012 and by 2016 had decreased by

1,025,042,815 minutes annually from 3,833,504,867 minutes in 2011 to 2,808,462,052 minutes in 2016, which represents more than a 26% decline in CEA traffic volume. J. Schill Decl. at ¶ 30. There has been a corresponding significant decrease in Aureon's interstate CEA gross revenue of $11,303,912 from $31,419,869 in 2011 to $20,115,957 in 2015. *Id.*

40. Aureon denies that growth in traffic and revenue since 2005 has been huge. It is the decrease in CEA minutes since 2012 that has been huge. J. Schill Decl. at ¶ 30. This decline in CEA traffic volume is primarily due to a huge decrease in traffic that Aureon assumes is related to access stimulation by subtending LECs. The annual traffic volume that Aureon assumes is the result of access stimulation by subtending LECs decreased by more than 912 million minutes between 2011 and 2016. *Id.*

41. Aureon admits that its CEA network provides modern information services and other advanced network services that the Commission expected the CEA network to provide when the Commission approved its construction.[12] Aureon denies that its CEA revenue has increased during the time period relevant to this dispute. Aureon's interstate CEA gross revenue decreased by $11,303,912 from $31,419,869 in 2011 to $20,115,957 in 2015, which constitutes a revenue decrease of nearly 36%. J. Schill Decl. at ¶ 30. AT&T also mischaracterizes Aureon's interconnection agreements with wireless carriers as business expansion. Aureon was ordered by

[12] *FCC 214 Order*, 3 FCC Rcd. at 1468, ¶ 4, and 1474, ¶ 38 (the CEA network will "speed the availability of high quality varied competitive services to small towns and rural areas"); Ex. 28, *State Authorization*, 1988 Iowa PUC Lexis 1, slip op. at 10 ("the concentration will benefit the general public in Iowa by assuring that a substantial portion of rural Iowa will have a network in place to deliver information services. It would not be desirable to deny hundreds of thousands of Iowans the opportunity to obtain information services as those become available. A network such as the one to be provided by INS provides the means to assure timely access to information services in rural Iowa"); *Nw. Bell Tel. Co.*, 477 N.W.2d at 681 ("the network will also offer 'modern information systems'").

the Iowa Utilities Board to enter into such interconnection agreements with wireless carriers instead of billing its CEA tariff rates.[13]

42. Aureon denies that the CEA network was initially funded and built to provide only equal access. In their initial decisions approving the construction of the CEA network, the Commission and the Iowa Utilities Board stated that they expected the CEA network to also make advanced network services and modern information services available in rural Iowa.[14] Aureon admits that the services it offers meet those expectations.

43. Aureon admits that the quoted language is found in the cited opinion, but denies that the quoted language is relevant to the resolution of this dispute because Aureon is not a party to an access revenue sharing agreement, has never engaged in access stimulation, and bills rates under Section 61.38 of the Commission's rules that decrease as volume increases.[15] Aureon Legal Analysis, Part IV.

44. Aureon admits that the quoted language is found in the cited opinion, but denies that the quoted language is relevant to the resolution of this dispute. Access stimulation is

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[13] Ex. 30, *Exchange of Transit Traffic*, Order Affirming Proposed Decision and Order, Docket No. SPU-00-7, 2002 W.L. 535299, slip op. at 6 (IUB Mar. 18, 2002) ("The duty to negotiate applies directly to the LECs and wireless carriers, but may not apply to INS; however, the duty to interconnect (and, therefore, the duty to carry traffic) applies to INS just as it does to the other parties, so if INS wants to be compensated for carrying this traffic it will have to participate in the negotiations.").

[14] *FCC 214 Order*, 3 FCC Rcd. at 1468, ¶ 4, and 1474, ¶ 38 (the CEA network will "speed the availability of high quality varied competitive services to small towns and rural areas"); Ex. 28, *State Authorization*, 1988 Iowa PUC Lexis 1, slip op. at 10 ("the concentration will benefit the general public in Iowa by assuring that a substantial portion of rural Iowa will have a network in place to deliver information services. It would not be desirable to deny hundreds of thousands of Iowans the opportunity to obtain information services as those become available. A network such as the one to be provided by INS provides the means to assure timely access to information services in rural Iowa"); *Nw. Bell Tel. Co.*, 477 N.W.2d at 681 ("the network will also offer 'modern information systems'").

[15] F. Hilton Decl. ¶ 15.

inapplicable to a CEA provider like Aureon because it is not a LEC that serves end users that could stimulate traffic. Aureon Legal Analysis, Part IV. Furthermore, an increase in traffic volume does not result in an increase in access charges that Aureon bills IXCs. To the contrary, Aureon's rates are calculated on the basis of cost and traffic studies pursuant to Section 61.38, which causes Aureon's CEA rate to decrease as traffic volume increases. F. Hilton Decl. ¶ 19. All IXCs, their consumers, and all types of traffic routed over the CEA network benefit from the lower CEA rate that results from an increase in traffic volume.

45. Aureon is without knowledge or information sufficient to form a belief as to the rates generally charged by CLECs and the contracts that such CLECs have entered into with third parties. Aureon denies that the operations of CLECs are relevant to the resolution of this dispute because Aureon is not a CLEC and is not a party to an access revenue sharing agreement with any CLEC, free conference call provider, or other entity. *Id.* ¶¶ 15, 18. Furthermore, to the extent IXCs have routed access stimulation traffic to CLECs over the CEA network, such traffic has lowered the CEA tariff rate, which has been calculated in compliance with Section 61.38. *Id.* ¶ 13, 19.

46. Aureon admits that AT&T has characterized Commission decisions in relation to the rates charged by Great Lakes and other CLECs, but denies that the rates charged by Great Lakes or other CLECs is relevant to the resolution of this dispute. Aureon is not a CLEC. CLECs are governed by different tariffs and a different regulatory regime than the tariffs and regulations applicable to CEA providers like Aureon. Furthermore, access stimulation cannot work for a CEA provider because Section 61.38 requires the CEA tariff rate to decrease as traffic volume increases. The Tenth Circuit affirmed the Commission's determination that access stimulation only works

for LECs that "need not reduce their access rates 'to reflect their increased volume of minutes.'"[16] Therefore, the Commission's regulations applicable to Aureon's CEA service are not flawed.

47. Aureon denies the allegations in this paragraph to the extent they suggest that routing traffic over the CEA network is not efficient or cost effective. For AT&T's smaller competitors and for the sake of preserving rural competition, it is most efficient and cost effective to route AT&T's traffic (which now makes up 75% of all CEA traffic) over the CEA network in order to lower (under Section 61.38) the non-distance-sensitive interstate CEA rate paid by all IXCs and their consumers for access to the comprehensive, more than 2,700 mile rural CEA network. F. Hilton Decl. ¶ 22.

48. Aureon denies the allegations in this paragraph. Aureon's traffic volume for CEA service began decreasing in 2012 and by 2016 had decreased by 1,025,042,815 minutes annually from 3,833,504,867 minutes in 2011 to 2,808,462,052 minutes in 2016, which represents more than a 26% decline in CEA traffic volume. J. Schill Decl. at ¶ 30. This decline in CEA traffic volume is primarily due to a huge decrease in traffic related to access stimulation by subtending LECs. The annual traffic volume that Aureon assumes is the result of access stimulation by subtending LECs decreased by more than 912 million minutes between 2011 and 2016. *Id.*

49. Aureon denies the allegations in this paragraph. Most of the traffic associated with access stimulating CLECs in Iowa is not transported over Aureon's network. As Aureon only recently learned from reviewing documents produced by AT&T, **[[BEGIN THIRD PARTY HIGHLY CONFIDENTIAL]]** [redacted]

[16] *In re FCC 11-161*, 753 F.3d 1015, 1144-45 (10th Cir. 2014) (quoting *USF/ICC Transformation Order*, 26 FCC Rcd. at 17874, ¶ 657).

[redacted][17] **[[END THIRD PARTY HIGHLY CONFIDENTIAL]]** By contrast, Aureon's interstate CEA minutes for 2013 for all traffic routed over the CEA network by all IXCs was only 2,786,846,408.[18] Clearly, CLECs do not need the CEA network in order to engage in access stimulation and are not using the CEA network for the vast majority of their traffic.

50. Aureon denies the allegations in this paragraph. The Commission authorized CEA service for all types of terminating traffic and did not exclude conference calls or any other type of terminating traffic from the CEA mandatory terminating use requirement. Aureon Legal Analysis, Part III. CEA service is defined in Aureon's tariffs as applicable to all types of terminating traffic. Aureon Legal Analysis, Part III. The Iowa Utilities Board required Aureon to enter into traffic agreements with LECs before Aureon could provide CEA service to those LECs' exchanges.[19] The purpose of the traffic agreements that Aureon has with CLECs is to provide CEA service to IXCs for those CLECs' exchanges. F. Hilton Decl. ¶ 20. Access stimulation is not the purpose of those CEA traffic agreements. *Id.* Furthermore, the traffic agreements that Aureon has entered into with CLECs contain similar terms and conditions as those contained in the CEA traffic agreements with all other LECs. *Id.* Despite the traffic agreements with CLECs, the annual traffic volume that Aureon assumes is the result of access stimulation by subtending

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[17] *See* **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

[18] Ex. 14, Aureon's 2014 Tariff Filing (filed June 16, 2014), Introduction, Overview and Rate Development at 2.

[19] Ex. 29, *IUB Rehearing Order*, 1988 Iowa PUC Lexis 1, slip op. at 4-5 ("[p]ursuant to their participation agreements with INS [Aureon], the [participating telephone companies] PTCs will be allowed to require at their option that *all* terminating traffic be routed over the INS network and INS will be allowed to charge its CEA rate for all such terminating traffic") (emphasis added).

LECs decreased by more than 912 million minutes between 2011 and 2016. J. Schill Decl. at ¶ 30. Furthermore, Aureon's interstate CEA gross revenue decreased by $11,303,912 from $31,419,869 in 2011 to $20,115,957 in 2015, which constitutes a revenue decrease of nearly 36%. J. Schill Decl. at ¶ 30. The removal of all terminating traffic which AT&T contends is the result of access stimulation by LECs from the CEA network would significantly increase the CEA tariff rate for AT&T's competitors because Section 61.38 of the Commission's rules requires Aureon's CEA tariff rate to increase as traffic volume decreases. Aureon Legal Analysis, Part VI.

51. Aureon admits that the quoted language is contained in the cited CEA traffic agreement, but denies that the cited contract involves a service provided to Great Lakes. Like other CEA participation agreements, the purpose of the traffic agreement with Great Lakes is to obtain Great Lakes' agreement to connect to the CEA network so that Aureon can provide CEA service *to* IXCs that desire access to Great Lakes' exchange. F. Hilton Decl. ¶ 21. The Great Lakes traffic agreement describes the service that Aureon will provide as CEA service as defined in Aureon's tariff, and CEA service under the CEA tariffs is only provided and billed to IXCs.[20] Because CEA service is provided to IXCs, and not to LECs, none of the CEA traffic agreements or participation agreements require the LECs to pay for use of the CEA network. F. Hilton Decl. ¶ 21. Furthermore, the terms of the traffic agreement with Great Lakes are nearly identical to the terms of all other CEA participation agreements that the Iowa Utilities Board has required of Aureon as a prerequisite to providing CEA service to a particular LEC's exchange. *Id.* Consistent with the Commission's CEA mandatory terminating use policy, the Iowa Utilities Board authorized the CEA participation agreements to require all traffic to the end office of the LEC

[20] *See* Ex. 65, Traffic Agreement by and between Great Lakes Communication Corp. and Iowa Network Services, Inc., dated July 1, 2005 (Aureon_00091, 00096) ("Aureon-Great Lakes Traffic Agreement").

signing the traffic agreement to be routed over the CEA network. The courts affirmed the approval of the CEA exclusive agreements on appeal. *Nw. Bell Tel. Co.*, 477 N.W.2d at 687 ("the board's approval of the agreements between INS and the PTC's for the exclusive provision of terminating access services was properly granted and not violative of either antitrust law or the Iowa Constitution").

52. Aureon admits that the quoted language is contained in the cited CEA participation agreements, but denies the misleading implication that those agreements involve a service that Aureon has provided without charge. Those participation agreements implement the Iowa Utilities Board's requirement that Aureon enter into a participation agreement prior to providing CEA service to IXCs with respect to a particular LEC's exchange.[21] F. Hilton Decl. ¶ 21. Absent from all of Aureon's CEA traffic agreements, whether with ILECs or CLECs, is any charge to the LEC because CEA service is provided and charged to the IXC. *Id.* Furthermore, as authorized by the Iowa Utilities Board and upheld on appeal, all of Aureon's CEA traffic agreements with ILECs and CLECs require all of the switched access traffic associated with the LEC's end office to be routed over the CEA network.[22] F. Hilton Decl. ¶ 21.

53. Aureon denies the allegations in this paragraph. It is completely meritless for AT&T to allege that Aureon has acted improperly by entering CEA participation agreements that require all switched access traffic originating from or terminating to a LEC's end office to be routed over the CEA network. Aureon Legal Analysis, Part V. The Commission adopted a

[21] Ex. 29, *IUB Rehearing Order*, 1988 Iowa PUC Lexis 1, slip op. at 4-5 ("[p]ursuant to their participation agreements with INS [Aureon], the [participating telephone companies] PTCs will be allowed to require at their option that *all* terminating traffic be routed over the INS network and INS will be allowed to charge its CEA rate for all such terminating traffic") (emphasis added).

[22] *Nw. Bell Tel. Co.*, 477 N.W.2d at 687 ("the board's approval of the agreements between INS and the PTC's for the exclusive provision of terminating access services was properly granted and not violative of either antitrust law or the Iowa Constitution").

mandatory use policy for Aureon's CEA network to maintain an affordable CEA tariff rate for AT&T's smaller competitors, the Iowa Utilities Board approved the CEA participation agreements requiring traffic to be routed over the CEA network, and the Iowa Supreme Court found the participation agreements to be lawful. *See supra* ¶¶ 36, 52. In further implementation of the CEA mandatory use policy, the Commission adopted Section 69.112(i) expressly exempting CEA providers and the subtending LECs from the requirement to provide direct-trunked transport to AT&T.[23] Traffic on the CEA network that Aureon assumes is access stimulation traffic has decreased, not increased as AT&T alleges. *See supra* ¶ 50.

54. Aureon admits that the quoted language is contained in the cited opinion, but denies that the Commission's access stimulation rules are applicable to CEA providers or relevant to the resolution of this dispute. The Commission's access stimulation rules only apply to LECs that serve end users (not to CEA providers with no end users), and Aureon is not a party to any access revenue sharing agreement, which is an essential element of access stimulation. Aureon Legal Analysis, Part IV; F. Hilton Decl. ¶ 15; *see also supra* ¶ 15.

55. Aureon admits that the quoted language is contained in the *USF/ICC Transformation Order*, but denies that the LEC rate caps and LEC rate parity rules are applicable to CEA service providers, which are neither ILECs nor CLECs. The Commission has classified CEA providers as dominant carriers which calculate their rates under Section 61.38, rather than the LEC rate caps adopted for non-dominant ILECs and CLECs. Aureon Legal Analysis, Part II. Furthermore, as AT&T concedes in this paragraph, the purpose of the LEC rate caps is to transition

[23] *Transport Rate Structure Order*, 7 FCC Rcd. at 7048-49, ¶ 91 ("[T]he Commission has previously approved centralized equal access arrangements with mandatory termination requirements, . . . and we do not require centralized equal access providers or LECs participating in such arrangements to offer direct-trunked transport service.").

to bill-and-keep, which depends upon recovering costs from LEC end users. As CEA service is not provided to end users, the purpose of the LEC rate caps is incompatible with CEA service. Aureon Legal Analysis, Part II.C.

56. Aureon admits that it has not revised its rates as a consequence of LEC rate caps that do not apply to dominant carriers like Aureon that calculate tariff rates for CEA service pursuant to Section 61.38 of the Commission's rules. Aureon denies the inference that its CEA tariff rate has not already been reduced due to the traffic volumes that AT&T contends are the result of access stimulation by subtending LECs. The traffic and cost studies submitted with Aureon's most recent tariff filing reflected costs and demand, including the additional facility costs and traffic on Aureon's network resulting from access stimulation by carriers other than Aureon.[24] F. Hilton Decl. ¶ 19. Therefore, even if, *arguendo*, Aureon was engaged in access stimulation, which it is not, the Commission's rules would not require any reduction in Aureon's tariff rates.[25]

57. Aureon admits that it did not cap its tariff rates, but denies that the LEC rate caps for non-dominant ILECs and CLECs that serve end users are applicable to a dominant carrier like Aureon that is not an ILEC or CLEC, and provides CEA service which does not serve end users. Aureon Legal Analysis, Part II. Aureon revised its CEA tariff rate as required by Section 61.38 to reflect changes in costs and traffic volume. Aureon Legal Analysis, Part VI.C.

58. Aureon denies that it was required to reduce its intrastate CEA tariff rate. Section 51.909 of the Commission's rules only requires ILECs to reduce their intrastate rates, and Aureon is not an ILEC. Aureon Legal Analysis, Part II.B. Furthermore, Section 51.911 only requires

[24] *See generally* Ex. 15, Aureon's 2016 Tariff Filing.

[25] A Section 61.38 carrier engaged in access stimulation must reduce its tariff rates "unless the costs and demand . . . were reflected in its most recent tariff filing." *USF/ICC Transformation Order* at 17884, ¶ 685.

CLECs to reduce their intrastate rates and a CEA service provider like Aureon is not a CLEC. Aureon Legal Analysis, Part II.A.

59. Aureon denies that the CEA tariff rates are unlawful or that AT&T has properly withheld amounts billed by Aureon. Aureon also denies that AT&T is entitled to a refund. Aureon calculated the CEA tariff rate in compliance with Section 61.38 of the Commission's rules. The CEA tariff rates were properly billed to AT&T for all traffic that AT&T routed over the CEA network. The LEC rate caps do not apply to Aureon because it is a CEA provider, and not an ILEC or CLEC. *See supra* ¶¶ 55, 57-58. Aureon is without knowledge or information sufficient to verify how AT&T calculated the portions of Aureon's invoices that it has not paid, but it appears that AT&T has paid a rate of zero for most of its CEA traffic. Furthermore, AT&T violated the billing dispute provisions in the intrastate CEA tariffs, which state that "the customer will, notwithstanding the continuing existence of the dispute, pay the billed amount."[26]

60. Aureon admits that it brought a tariff enforcement action against AT&T, and that AT&T filed an answer and counterclaims.

61. Aureon admits that the federal district court dismissed Aureon's motion to dismiss without prejudice, dismissed Aureon's motion for summary judgment without prejudice, and stayed the case in order to refer the case to the Commission. Aureon also admits that the quoted language is contained in the cited opinion.

62. Aureon admits that the quoted language is contained in Aureon's tariff, but denies the allegation that CEA service is not provided for terminating traffic, including traffic that AT&T claims is access stimulation terminating traffic. The Commission and the Iowa Utilities Board

[26] Ex. 32, INAD Iowa Tariff No. 1, § 2.1.16(B), Original Page 42; Ex. 38, INAD Nebraska P.S.C. Tariff No. 3, § 2.1.16(B), Original Page 59.

approved the construction of the CEA network to switch and transport all terminating traffic to subtending LECs, and the CEA tariff defines CEA service as providing "a concentration and distribution function for originating *and* terminating traffic."[27] Aureon Legal Analysis, Part III.

63. Aureon denies the allegations in this paragraph. The CEA tariff does define CEA service as follows: "Iowa Network provides a two-point electrical communications path between a point of interconnection with the transmission facilities of an Exchange Telephone Company at a location listed in Section 8 following and Iowa Network's central access tandem where the Customer's traffic is switched to originate or terminate its communications. It also provides for the switching facilities at Iowa Network's central access tandem." INAD Tariff F.C.C. No. 1, § 6.1, 4th Revised Page 88 (Ex. 47). When AT&T routed calls via Aureon's facilities, the only route that those calls could take include: (1) switching at Aureon's central access tandem; and (2) the electrical communications path between Aureon's central access tandem, and the networks of the LECs that chose to connect with the CEA network.[28] Because these two elements satisfy the tariff's definition of CEA service and were provided with the service that AT&T received from Aureon, the service that was provided and billed to AT&T was CEA service as defined in the tariffs. Aureon Legal Analysis, Part III.

64. Aureon denies the allegations in this paragraph. The Commission approved CEA service for far more than just equal access and originating traffic. The Commission and the Iowa Utilities Board also authorized CEA service to make advanced features and modern information services available in rural Iowa. The Commission authorized construction of the CEA network to "speed the availability of high quality varied competitive services to small towns and rural areas."

[27] Ex. 47, Iowa Network Access Division Tariff F.C.C. No. 1, § 6.1, 4th Revised Page 88 (emphasis added).

[28] F. Hilton Decl. ¶ 9.

FCC 214 Order, 3 FCC Rcd. at 1468, ¶ 4, and 1474, ¶ 38. The Iowa Utilities Board approved Aureon's CEA network because "the concentration will benefit the general public in Iowa by assuring that a substantial portion of rural Iowa will have a network in place to deliver information services."[29] In affirming approval of the CEA network, the courts recognized that the provision of modern information services was an important objective of CEA service. *Nw. Bell Tel. Co.*, 477 N.W.2d at 681 ("the network will also offer 'modern information systems'"). CEA service was also designed to make it economical for smaller IXCs to terminate calls to rural areas and facilitate competition with AT&T for terminating long distance calls to those rural areas. *Id.* at 680 (describing the CEA network as "a fiber-optic network and modern switching system that will concentrate the long-distance traffic"). CEA service for terminating traffic enables smaller IXCs competing with AT&T to connect at a single location in order to terminate their customers' calls to all the exchanges of more than 200 LECs listed in the CEA tariff. F. Hilton Decl. ¶¶ 3, 6. If CEA service did not transport terminating traffic, smaller IXCs would have to build or lease facilities to each of the end offices of more than 200 LECs. In the Commission's words, this would be "an expensive task." *FCC 214 Order*, 3 FCC Rcd. at 1468, ¶ 3. CEA service also makes it efficient and attractive for carriers to terminate traffic to rural areas by charging a non-distance-sensitive CEA transport rate that is the same charge whether an interstate call is transported 101 miles (the average distance on the CEA network) or 10 miles. Aureon Legal Analysis, Part VI.D. Another objective of CEA service is to provide accurate measurement of terminating traffic when a subtending LEC's end office lacks measurement and recording capabilities. *Transport Rate Structure Order*, 7 FCC Rcd. at 7050-51, ¶¶ 87, 94 ("terminating traffic is required to go through the tandem because only the tandem, not the individual end offices, has the measurement and

[29] Ex. 28, *State Authorization*, 1988 Iowa PUC Lexis 1, slip op. at 10.

billing capabilities"). Furthermore, the CEA network was designed to reduce the costs of competing in rural Iowa for AT&T's smaller competitors even though it would increase costs for AT&T. In approving Aureon's CEA network, the Commission concluded that "[a]lthough the network INAD [Iowa Network Access Division] would lease will increase the cost of access, we judge that the benefits of added competition should outweigh those costs, especially in view of the comprehensive coverage of the network." *FCC 214 Order*, 3 FCC Rcd. at 1474, ¶ 38. For AT&T's smaller competitors and for the sake of preserving rural competition, it is most efficient and cost effective to route AT&T's traffic (which now with the inclusion of AT&T's wholesale service to other IXCS makes up 75% of all CEA traffic) over the CEA network in order to keep affordable (under Section 61.38) the non-distance-sensitive interstate CEA rate paid by all IXCs and their consumers for access to the comprehensive, more than 2,700 mile rural CEA network. *See supra* ¶¶ 33, 35, 47

65. Aureon denies the allegations in this paragraph. The transport and switching of all types of terminating traffic, including access stimulation traffic, is a critical aspect of Aureon's CEA service. The Commission and the Iowa Utilities Board adopted a CEA mandatory terminating use policy in order to make CEA service economically viable for AT&T's smaller

IXC competitors in rural Iowa.[30] Aureon Legal Analysis, Parts III and V. The CEA tariff rate has remained affordable for AT&T's smaller competitors due to the inclusion of terminating traffic, including access stimulation traffic, in the calculation of the CEA rate under Section 61.38 of the Commission's rules. Aureon Legal Analysis, Part VI.D. The traffic and cost studies submitted with Aureon's most recent tariff filing reflected costs and demand, including the additional facility costs and traffic on Aureon's network resulting from access stimulation by carriers other than Aureon.[31] F. Hilton Decl. ¶ 19. Section 61.38 of the Commission's rules ensures that Aureon's CEA tariff rate remains just and reasonable as access stimulation traffic increases because Aureon's rates are calculated on the basis of cost and traffic studies, which causes Aureon's CEA rate to decrease as traffic volume increases. *Id.* Therefore, an increase in traffic volume, including access stimulation traffic, does not result in an increase in access charges that Aureon bills IXCs. Instead, all IXCs, all of their consumers, and all types of traffic routed over the CEA network benefit from the lower CEA rate that results from an increase in terminating traffic volume,

[30] *Nw. Bell Tel. Co.*, 477 N.W.2d at 684 ("unless INS provided terminating access as well as originating access, all the costs of operating the network would have to be recovered in the provision of originating access only. Such a result would frustrate one of the main goals of the INS system since the higher costs, which would be passed along to the interexchange utilities, would deter the entry of competition"); *FCC 214 Order*, 3 FCC Rcd. at 1473, ¶ 33 ("We do not believe that the mandatory termination requirement for interstate traffic is unreasonable . . . Given the expected benefits of the network . . . the requirement that terminating interstate traffic transit the Des Moines switch does not appear to be unlawful or unreasonable"); *FCC 214 Recon. Order*, 4 FCC Rcd. at 2201, ¶¶ 2, 3 ("In reaching its decision, the Bureau determined that INAD's [Iowa Network Access Division's] inclusion of a mandatory terminating use requirement for interstate traffic was not 'unreasonable [nor would differ] substantially from the normal way access is provided, as both an originating and terminating service'"). Furthermore, the Commission conditioned Aureon's Section 214 certificate upon the Iowa Utilities Board's decision, which ruled that "[p]ursuant to their participation agreements with INS [Aureon], the [participating telephone companies] PTCs will be allowed to require at their option that *all* terminating traffic be routed over the INS network and INS will be allowed to charge its CEA rate for *all* such terminating traffic." Ex. 29, *IUB Rehearing Order*, 1988 Iowa PUC Lexis 1, slip op. at 4-5 (emphasis added).

[31] *See generally* Ex. 15, Aureon's 2016 Tariff Filing.

including access stimulation terminating traffic. Removal of AT&T's traffic (which, including AT&T's wholesale service to other IXCs, is now 75% of all CEA traffic) from the CEA network would seriously harm rural consumers by endangering the economic viability and affordability of the CEA network, which has made the availability of advanced services and competition with AT&T feasible in rural Iowa. F. Hilton Decl. ¶¶ 14, 22.

66. Aureon denies the allegations in this paragraph. From its inception, CEA service was intended to apply to all types of terminating traffic, and the Commission did not exclude conference calls or any other type of terminating traffic from CEA service. Aureon Legal Analysis, Parts III and IV. So long as AT&T's traffic remains on the CEA network, CEA service provides a cost effective way for AT&T's smaller competitors to comprehensively terminate their calls to rural Iowa over a more than 2,700 mile rural CEA network without having to pay a distance-sensitive transport charge, regardless of whether an interstate call is transported 101 miles (the average distance on the CEA network) or 10 miles. Aureon Legal Analysis, Part VI.D. The CEA traffic agreements, which require AT&T's traffic to remain on the CEA network in order to ensure an affordable CEA rate for AT&T's competitors, has increased competition with AT&T in rural Iowa and are lawful. *Nw. Bell Tel. Co.*, 477 N.W.2d at 687 ("the board's approval of the agreements between INS and the PTC's for the exclusive provision of terminating access services was properly granted and not violative of either antitrust law or the Iowa Constitution"). In fact, CEA service has created more competition with AT&T to terminate traffic to rural areas than originate traffic. CEA service has succeeded in making it attractive for fifteen IXCs to use the CEA network to originate traffic and for seventeen IXCs to use the CEA network to terminate traffic. F. Hilton Decl. ¶ 3. Furthermore, Aureon has complied with its tariff which applies the CEA tariff rate to all terminating traffic, including access stimulation terminating traffic. The CEA

tariff defines CEA service as providing "a concentration and distribution function for originating *and* terminating traffic."[32] For the access stimulation traffic that AT&T routed over the CEA network, Aureon provided: (1) switching at Aureon's central access tandem; and (2) the electrical communications path between Aureon's central access tandem and the networks of the LECs that chose to connect with the CEA network.[33] Because these two elements satisfy the tariff's definition of CEA service and were provided for the facilities that AT&T ordered from Aureon for AT&T's access stimulation traffic, the service that was provided and billed to AT&T was CEA service as defined in the tariffs. INAD Tariff F.C.C. No. 1, § 6.1, 4th Revised Page 88 (Ex. 47). Thus, it was reasonable for Aureon to bill AT&T the CEA rates for terminating CEA service, and Aureon has not violated the Communications Act. *See also supra* ¶¶ 51-52, 62-63, 65.

67. Aureon denies the allegations in this paragraph. The Commission authorized CEA service for all types of terminating traffic, and did not exclude access stimulation terminating traffic. Aureon Legal Analysis, Parts III and IV. *See also supra* ¶¶ 36, 65.

68. Aureon denies the allegations in this paragraph. The Commission approved CEA service to provide much more than just equal access and originating transport. *See supra* ¶¶ 33, 64.

69. Aureon denies the allegations in this paragraph. The Commission's *Indiana Switch* order referred to how the Commission would review future applications like Aureon's Section 214 application. The Commission completed such an independent examination of the unique facts and circumstances of Aureon's CEA service during Aureon's Section 214 proceeding. The Commission's approval of Aureon's CEA service was not so limited as AT&T alleges. In addition

[32] Ex. 47, Iowa Network Access Division Tariff F.C.C. No. 1, § 6.1, 4th Revised Page 88 (emphasis added).

[33] F. Hilton Decl. ¶ 9.

to making it economical for smaller IXCs to terminate calls to rural areas, the Commission expected Aureon's CEA service for Iowa to make advanced network services and modern information services available to rural residents. *See also supra* ¶¶ 36, 65. Furthermore, the approval of Aureon's CEA network by the Iowa Utilities Board fully satisfied the condition that the Commission imposed upon Aureon's Section 214 authorization, and therefore, that condition is no longer operative. *FCC 214 Recon. Order*, 4 FCC Rcd. at 2202, ¶ 7 ("we conclude INAD's state authority satisfies our condition").

70. Aureon denies the allegations in this paragraph, which misrepresent who are the customers of CEA service and what are those customers' needs. IXCs, and IXCs competing with AT&T in particular, are the customers of CEA service. Neither free conference call companies nor CLECs are customers of CEA service. The AT&T IXC competitors that purchase CEA service clearly need CEA service to switch and transport to rural areas all types of terminating traffic, including access stimulation terminating traffic. *See also supra* ¶¶ 65-66. During the time period relevant to this dispute, the annual traffic volume that Aureon assumes is the result of access stimulation by subtending LECs decreased by more than 912 million minutes between 2011 and 2016. J. Schill Decl. at ¶ 30. Furthermore, Aureon's interstate CEA gross revenue decreased by $11,303,912 from $31,419,869 in 2011 to $20,115,957 in 2015, which constitutes a revenue decrease of nearly 36%. J. Schill Decl. at ¶ 30.

71. Aureon admits that the quoted language is contained in the Commission's orders relating to the CEA network in Minnesota, but denies that those decisions are relevant to Aureon's CEA network, which presented unique facts and circumstances that were independently examined by the Commission in Aureon's Section 214 proceeding. Terminating CEA service was essential

to the Commission's approval of Aureon's CEA network. Aureon Legal Analysis, Parts III and IV. *See also supra* ¶¶ 36, 65-66.

72. Aureon denies the allegations in this paragraph. The nature, functions, and benefits to competitive IXCs associated with terminating CEA service provided for access stimulation terminating traffic is the same as they are for all other types of terminating traffic. The CEA tariff defines CEA service as including two functions (switching and transport), which are performed for access stimulation terminating traffic just as those two functions are performed for other types of terminating traffic. *See also supra* ¶ 66. CEA service provides a cost effective way for AT&T's smaller competitors to comprehensively terminate all types of calls, including access stimulation traffic, to hundreds of rural local exchanges over a more than 2,700 mile rural CEA network without having to pay a distance-sensitive charge, regardless of whether an interstate call is transported 101 miles (the average distance on the CEA network) or 10 miles. Aureon Legal Analysis, Part III. Furthermore, the approval of Aureon's CEA network by the Iowa Utilities Board fully satisfied the condition that the Commission imposed upon Aureon's Section 214 authorization and, therefore, that condition is no longer operative. *FCC 214 Recon. Order*, 4 FCC Rcd. at 2202, ¶ 7 ("we conclude INAD's state authority satisfies our condition").

73. Aureon denies the allegations in this paragraph to the extent they suggest that CEA service was not intended to provide benefits for terminating traffic. Terminating CEA service for access stimulation traffic confers the same benefits for AT&T's smaller competitors as CEA service for other types of terminating traffic. *See also supra* ¶ 72. Aureon also denies AT&T's suggestion that there is a requirement that most of the CEA traffic be intrastate. The Iowa Utilities Board had not yet approved Aureon's CEA network at the time the Commission was considering Aureon's Section 214 application. The Commission approved Aureon's Section 214 application

with the assumption that the Iowa Utilities Board would also grant approval. After the Iowa Utilities Board approved Aureon's CEA network, the Commission adopted an order stating that the assumption or condition had been satisfied. *FCC 214 Recon. Order*, 4 FCC Rcd. at 2202, ¶ 7 ("we conclude INAD's state authority satisfies our condition"). The Commission did not adopt an ongoing requirement that most of the CEA traffic be intrastate.

74. Aureon admits that the quoted language is contained in the cited tariff filings, but denies that such language states that CEA service for access stimulation terminating traffic is not like CEA service for other types of terminating traffic. Aureon proposed a contract tariff, which never became effective, that would have required the IXC to sign a separate contract containing terms, conditions, and rates that were "not like" the terms, conditions, and rates in the CEA tariff. F. Hilton Decl. ¶ 24. Despite the different contractual terms, the functions, nature, and benefits of CEA service remained the same for both access stimulation terminating traffic and other terminating traffic. *Id*. The proposed contract tariff stated: "'Customer agrees to provisioning flexibility for Iowa Network and other terms that will result in the Customer receiving a switching and Transport service that is not like the centralized equal access service that is not subject to those additional terms and conditions.'" *Id.* (quoting INAD Tariff F.C.C. No. 1, § 7.1.1, Original Page 146.1 (Ex. 54)). Pursuant to discussions with the FCC's staff, that "not like" language was subsequently deleted from the tariff and replaced it with a volume discount plan that offers the same CEA service to both high-volume terminating traffic and low-volume terminating traffic. F. Hilton Decl. ¶ 24 (citing INAD Tariff F.C.C. No. 1, § 7.1.1, 1st Revised Page 146.1 (Ex. 55)). As the tariffed volume discount plan, which became effective on May 20, 2017, expressly applies to both terminating traffic and a large traffic volume (25 million interstate minutes per month), those effective tariff regulations are additional proof that CEA service and the CEA tariff apply to access

stimulation terminating traffic. F. Hilton Decl. ¶ 24 (citing INAD Tariff F.C.C. No. 1, § 6.7.3, 2nd Revised Page 137 (Ex. 51)).

75. Aureon denies the allegations in this paragraph. Aureon lawfully billed AT&T the CEA tariff rates for CEA service for all the terminating traffic, including access stimulation terminating traffic, AT&T routed over the CEA network. The Commission approved Aureon's CEA network for all terminating traffic. Furthermore, the CEA tariffs define CEA service to encompass the switching and transport functions provided for access stimulation terminating traffic, which are the same functions that CEA service provides for all other terminating traffic. Aureon Legal Analysis, Parts III and IV. *See also supra* ¶¶ 36, 65, 72, 74.

76. Aureon admits that the quoted language is contained in the Commission's orders relating to proposals for Indiana and Minnesota, but denies that those decisions are relevant to Aureon's CEA network in rural Iowa, which presented unique facts and circumstances that were independently examined by the Commission in Aureon's Section 214 proceeding. The Commission's approval of Aureon's CEA service was not so limited as AT&T alleges. In addition to making it economical for smaller IXCs to terminate calls to rural areas, the Commission expected Aureon's CEA service to make advanced network services and modern information services available to rural residents. *See also supra* ¶¶ 36, 65. Furthermore, in approving Aureon's CEA network, the Commission adopted a CEA mandatory use policy to ensure that sufficient traffic volume remained on the CEA network in order to maintain its affordability for AT&T's smaller competitors and thereby stimulate rural competition. Aureon Legal Analysis, Parts III and V. The mandatory use terms of Aureon's Section 214 authorization require AT&T to route its traffic to the exchanges of CEA subtending LECs over the CEA network, rather than remove AT&T's traffic from the CEA network via direct trunks to LEC end offices. In further

implementation of the CEA mandatory use policy, the Commission adopted Section 69.112(i) expressly exempting CEA providers and the subtending LECs from the requirement to provide direct-trunked transport to AT&T.[34] So long as AT&T's traffic remains on the CEA network, CEA service provides a cost effective way for AT&T's smaller competitors to comprehensively terminate their calls to rural Iowa over a more than 2,700 mile rural CEA network without having to pay a distance-sensitive transport charge, regardless of whether an interstate call is transported 101 miles (the average distance on the CEA network) or 10 miles. F. Hilton Decl. ¶ 22. The CEA network was designed to reduce the costs of competing in rural Iowa for AT&T's smaller competitors even though it would increase costs for AT&T. In approving Aureon's CEA network, the Commission concluded that "[a]lthough the network INAD [Iowa Network Access Division] would lease will increase the cost of access, we judge that the benefits of added competition should outweigh those costs, especially in view of the comprehensive coverage of the network." *FCC 214 Order*, 3 FCC Rcd. at 1474, ¶ 38. If AT&T were permitted to route its traffic over direct trunks to the LEC end offices, the removal of that AT&T traffic from the CEA network would significantly increase the CEA tariff rate for AT&T's competitors because Section 61.38 of the Commission's rules requires Aureon's CEA tariff rate to increase as traffic volume decreases. Aureon Legal Analysis, Part VI. For AT&T's smaller competitors and for the sake of preserving rural competition, it is most efficient and cost effective to continue to require AT&T to route AT&T's traffic (which now with the inclusion of AT&T's wholesale service to other IXCs makes up 75% of all CEA traffic) over the CEA network in order to keep affordable (under Section 61.38)

[34] *Transport Rate Structure Order*, 7 FCC Rcd. at 7048-49, ¶ 91. ("[T]he Commission has previously approved centralized equal access arrangements with mandatory termination requirements, . . . and we do not require centralized equal access providers or LECs participating in such arrangements to offer direct-trunked transport service.").

the non-distance-sensitive interstate CEA rate paid by all IXCs and their consumers for access to the comprehensive, more than 2,700 mile rural CEA network. *See supra* ¶¶ 33, 35, 47.

77. Aureon denies AT&T's allegation that it would be beneficial for AT&T's smaller IXC competitors or their consumers to permit AT&T to use direct trunks to remove AT&T's traffic (which would be most of the CEA traffic) from the CEA common trunks. Such a large loss in CEA traffic volume would require a significant increase under Section 61.38 in the CEA rate necessary to recover the CEA network costs. Consequently, AT&T's proposal would either cause a significant increase in long distance prices paid by the customers of AT&T's competitors, or more likely, render CEA service unaffordable for AT&T's smaller competitors, and eliminate competition in rural Iowa for both originating and terminating long distance calls. F. Hilton Decl. ¶ 22; *see also supra* ¶¶ 36, 65.

78. Aureon denies AT&T's insinuation that AT&T's smaller IXC competitors or their consumers would be better off if Aureon provided AT&T with direct trunks and removed AT&T's traffic from the CEA common trunks. AT&T's proposal is unreasonable, anti-competitive, and would discriminate against AT&T's smaller IXC competitors and their customers. Allowing AT&T to remove most of the traffic from the CEA common trunks, and eliminate any contribution by AT&T towards recovery of the CEA revenue requirement, would force AT&T's smaller IXC competitors and their consumers to pay a much higher CEA rate, which would likely render CEA service and rural competition with AT&T economically unviable. F. Hilton Decl. ¶ 22; *see also supra* ¶¶ 36, 65, 77. Furthermore, under AT&T's proposal, AT&T would effectively pay an unlawful preferential rate for the use of Aureon's network that would be much lower than the CEA rate paid by AT&T's competitors.

79. Aureon denies AT&T's insinuation that the lease with Great Lakes supports AT&T's proposal for DS-3 direct trunks that would remove AT&T's traffic from the CEA common trunks. For the same reasons described *supra* ¶ 78, this AT&T proposal is unreasonable, anti-competitive, would discriminate against AT&T's smaller IXC competitors and their customers, and lead to the destruction of competition with AT&T in rural areas that the CEA network has been successful in creating. Furthermore, the CEA tariff rate reflects the costs and value associated with a CEA network with redundant access tandems, signaling systems and databases, and a fiber network spanning more than 2,700 miles to hundreds of local exchanges. J. Schill Decl. ¶ 47. The CEA rate required to make such a comprehensive rural network available to all IXCs on a non-discriminatory basis cannot be rationally compared to a single lease for transport between only two geographic points. *Id*.

80. Aureon denies AT&T's insinuation that the transport costs of third parties or the agreements for wireless traffic are relevant or otherwise support AT&T's proposal to pay less than the CEA tariff rate. That rate was calculated in accordance with Section 61.38 and Parts 32, 36, 64, and 69 to recover the revenue requirement necessary to support the continued operation of the CEA network for the benefit of competition and ultimately consumers. If the share of that revenue requirement paid by AT&T is significantly reduced, then the shortfall would have to be recovered from AT&T's competitors. F. Hilton Decl. ¶ 22. Therefore, this AT&T proposal is also unreasonable, anti-competitive, would discriminate against AT&T's smaller IXC competitors and their customers, and lead to the destruction of competition with AT&T in rural areas that the CEA network has been successful in creating. Furthermore, the CEA tariff rate reflects the costs and value associated with a CEA network with redundant access tandems, signaling systems and databases, and a fiber network spanning more than 2,700 miles to hundreds of local exchanges. J.

Schill Decl. ¶ 47. Aureon's contracts with wireless carriers involve a service that does not include all the functions available with CEA service. For example, when Aureon transports a call from a LEC's facilities to a wireless carrier's network, Aureon does not provide equal access functionality. The CEA rate required to make the comprehensive CEA network available with all its features and functions to all IXCs and on a non-discriminatory basis cannot be rationally compared to the limited service provided for land-to-mobile traffic or the point-to-point transport provided by third parties without all the CEA functions. *Id.*

81. Aureon admits that the CEA participation agreements with all subtending LECs require all long distance calls originating from or terminating to the LEC's end office to be routed over Aureon's CEA network, but denies that those CEA participation agreements are anti-competitive. The Commission and the Iowa Utilities Board require such routing in order to make CEA service economically viable for AT&T's smaller competitors in rural Iowa. *FCC 214 Recon. Order*, 4 FCC Rcd. at 2201, ¶¶ 2, 3 ("In reaching its decision, the Bureau determined that INAD's [Iowa Network Access Division's] inclusion of a mandatory terminating use requirement for interstate traffic was not 'unreasonable [nor would differ] substantially from the normal way access is provided, as both an originating and terminating service'"); *IUB Rehearing Order*, slip op. at 4 (Ex. 29) ("The Board agrees with the FCC that INS's network is designed to provide two-way access services and that INS should be allowed to collect its rates for terminating as well as originating services"). After considering "the potential for a total bypass of the INS terminating access services by some interexchange carriers," the Iowa Utilities Board also adopted a CEA mandatory use policy for intrastate calls:

> If that occurs, a substantial portion of the intra-state usage of the network would be lost. All costs of the INS network to provide intra-state centralized equal access would have to be borne by originating service. That would not be a reasonable outcome. In addition, such an outcome would appear to violate the condition in the

> FCC's Section 214 approval . . . Pursuant to their participation agreements with INS [Aureon], the [participating telephone companies] PTCs will be allowed to require at their option that all terminating traffic be routed over the INS network and INS will be allowed to charge its CEA rate for all such terminating traffic. *Id.* at 4-5.

Rather than find the CEA participation agreements to be anti-competitive, as AT&T alleges, the courts determined that the CEA mandatory use policy would increase rural competition, which it has, and that the CEA participation agreements are lawful.[35]

82. Aureon admits that the quoted language is contained in the cited decisions, but denies that those decisions are relevant to the regulations applicable to Aureon's CEA network in Iowa. Aureon's CEA network presented unique facts and circumstances that were independently examined by the Commission during Aureon's Section 214 proceeding, and it is the Commission's decisions granting Section 214 authorization to Aureon and approving its CEA tariff that are relevant to the resolution of this dispute. The *PrairieWave* case did not involve a LEC connected to Aureon's CEA network. Furthermore, the proposals for Minnesota and Indiana involved unique networks, less investment and fewer construction costs, and different geographic comprehensiveness and scope than Aureon's CEA network. For example, the Minnesota CEA proposal required less new fiber construction because there was "a substantial amount of fiber optic transmission capacity deployed" that was available to be leased from third parties.[36] By

[35] *Nw. Bell Tel. Co.*, 477 N.W.2d at 684, 687 ("unless INS provided terminating access as well as originating access, all the costs of operating the network would have to be recovered in the provision of originating access only. Such a result would frustrate one of the main goals of the INS system since the higher costs, which would be passed along to the interexchange utilities, would deter the entry of competition . . . the board's approval of the agreements between INS and the PTC's for the exclusive provision of terminating access services was properly granted and not violative of either antitrust law or the Iowa Constitution").

[36] Ex. 27, *Application of Minnesota Independent Equal Access Corp.*, Memorandum Opinion, Order and Certificate, File No. W-P-C-6400, slip op. at n. 11. (FCC Aug. 22, 1990) ("Applicant now believes that substantial portions of its necessary transmission facilities can be leased").

contrast, Aureon was required to incur the cost of constructing a more than 2,700 mile new fiber optic network. F. Hilton Decl. ¶ 22. To ensure Aureon's per minute CEA rate for the recovery of those additional costs remained economical for AT&T's smaller competitors and would foster rural competition, it was necessary to require AT&T to route its traffic over the CEA network and spread the cost recovery over access minutes for all IXCs, including AT&T's access minutes. *Id.*

83. Aureon denies the allegations in this paragraph. The Commission, the Iowa Utilities Board, and the courts have found that the CEA mandatory use policy is pro-competitive and necessary for making competition in rural areas economically attractive for AT&T's smaller competitors. *See supra* ¶ 81. The Iowa Utilities Board implemented the CEA mandatory use policy, which was a condition of Aureon's Section 214 authorization, by requiring Aureon to enter into CEA traffic agreements that required all long distance calls originating from or terminating to a subtending LEC's end office to be routed over the CEA network, and the Iowa Supreme Court held that those CEA traffic agreements are lawful. *See supra* ¶ 81. AT&T's proposals to use direct trunks that would remove AT&T's traffic from the CEA network or shift more of the CEA cost recovery to AT&T's smaller competitors are unreasonable, anti-competitive, would discriminate against AT&T's smaller IXC competitors and their customers, and lead to the destruction of competition with AT&T in rural Iowa. *See supra* ¶¶ 77-80.

84. Aureon denies the allegations that the CEA participation agreements do not benefit competition. AT&T's bullying tactics aimed at forcing subtending LECs to remove AT&T's traffic from the CEA network demonstrate that the CEA participation agreements are necessary to forestall AT&T's campaign to circumvent the CEA mandatory use policy, and harm AT&T's smaller competitors and their customers. Whether AT&T removes its traffic from the CEA common trunks via direct trunks provided by Aureon or third parties, the same harm to rural

competition will occur: a higher CEA price for smaller IXCs and their customers, or more likely, the destruction of competition in rural Iowa for both originating and terminating long distance calls. F. Hilton Decl. ¶ 22; *see also supra* ¶¶ 36, 65, 77-80.

85. Aureon denies the allegations that the CEA mandatory use policy is outdated. The solution to the issues raised by AT&T is to enforce the CEA mandatory use policy rather than allow further discriminatory bypass pricing that harms the smaller IXCs that depend upon the CEA common trunks to compete against AT&T in rural Iowa. Because Section 61.38 of the Commission's rules requires the CEA rate to decrease as traffic volume increases, eliminating the bypass[37] that is violating the CEA mandatory use policy and moving that traffic onto the CEA network will result in a significant reduction in the CEA tariff rate, which will benefit all IXCs (not just AT&T) and all consumers. F. Hilton Decl. ¶ 23.

86. Aureon denies the allegations in this paragraph. Aureon properly billed the CEA tariff rates for all terminating traffic that AT&T routed over the CEA network, including the terminating traffic that AT&T alleges is access stimulation traffic. Aureon Legal Analysis, Parts III and IV; *see supra* ¶¶ 36, 65, 72. Furthermore, Aureon has not violated the rate caps and rate parity rules that the Commission adopted for non-dominant ILECs and CLECs because Aureon is not a non-dominant ILEC or CLEC. Aureon Legal Analysis, Part II.

87. Aureon denies the allegations in this paragraph to the extent they infer that the non-dominant LEC rate caps and rate parity rules apply to dominant carriers like Aureon that are CEA service providers, and not ILECs or CLECs. The non-dominant LEC rate caps and rate parity

[37] *See* J. Schill Decl. ¶ 28 **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

rules do *not* apply to dominant carriers and do *not* apply to CEA service providers without end users that are neither ILECs nor CLECs. Aureon Legal Analysis, Part II.

88. Aureon denies the allegations in this paragraph. The rate caps and rate parity rules are specific and by their express terms only apply to ILECs or CLECs, both of which have been reclassified by the Commission as non-dominant carriers. Aureon is a dominant carrier providing CEA service and neither an ILEC nor CLEC, and Aureon has never contended that it is an ILEC or a CLEC. The Commission has always regulated Aureon as a dominant carrier, and has never regulated Aureon as either an ILEC or CLEC. Therefore, dominant carriers like Aureon that provide CEA service are not subject to the non-dominant ILEC and CLEC rate cap and rate parity rules. Aureon Legal Analysis, Part II.

89. Aureon denies the allegations in this paragraph. The Commission classified Aureon as a dominant carrier which calculates rates under Section 61.38 of the Commission's rules, rather than the LEC rate caps and rate parity rules adopted for non-dominant ILECs and CLECs. Aureon Legal Analysis, Part II. Aureon calculated the CEA tariff rate in full compliance with Section 61.38. F. Hilton Decl. ¶¶ 13, 17.

90. Aureon admits that it is a telecommunications carrier that transports telecommunications traffic, but denies the allegations in this paragraph to the extent they infer that a CEA service provider like Aureon is subject to the specific rule applicable to only ILECs or the specific rule applicable to only CLECs. The rate cap and rate parity rules for ILECs are contained in Section 51.909 of the Commission's rules. Section 51.909 states that it applies to "Rate of Return Carriers," which Section 51.903(g) specifically defines as ILECs. Aureon is not an ILEC. Aureon Legal Analysis, Part II.B. The rate cap and rate parity rules for CLECs are contained in Section 51.911. Aureon is not a CLEC. Aureon Legal Analysis, Part II.A. These specific rules,

which expressly address the LEC rate caps and rate parity requirements, do not apply to CEA providers. Their scope is not broadened by the general definitions and statements upon which AT&T relies. Aureon Legal Analysis, Part II.C. Therefore, Aureon's CEA tariff rate was properly calculated in accordance with Section 61.38 of the Commission's rules applicable to dominant carriers like Aureon.

91. Aureon admits that the quoted language is contained in the *USF/ICC Transformation Order*, but denies that the specific language in Sections 51.909, 51.911, and 61.38 should be controlled or nullified by the isolated general snippets that AT&T selectively extracted from the *USF/ICC Transformation Order*. These words of inordinately general connotation were made more specific when the Commission codified Section 51.909(a), which only capped ILEC rates, and Section 51.911(a), which only capped CLEC rates. Furthermore, as a cardinal rule, regulations dealing with a narrow, precise, and specific subject, such as the dominant carrier rate regulations in Section 61.38, are not submerged by regulations covering a more generalized spectrum. *United States v. American Trucking Ass'ns, Inc*., 310 U.S. 534, 544 (1940) ("A few words of general connotation . . . should not be given a wide meaning"); *Morton*, 417 U.S. at 550 ("a specific statute will not be controlled or nullified by a general one"). Instead, the specific Section 61.38 dominant carrier rate regulations should be construed as an exception to such a general connotation:

> [W]here there are two statutes, the earlier special and the later general, – the terms of the general broad enough to include the matter provided for in the special, – the fact that the one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, and the general will not be understood as repealing the special.[38]

[38] *Rogers v. United States*, 185 U.S. 83, 87-88 (1902); *see also Radlax Gateway Hotel, LLC v. Amalgamated Bank*, 132 S.Ct. 2065, 2071 (2012).

Section 61.38 is a special rule that expressly addresses the regulation of dominant carrier tariff rates. The rule was adopted prior to the general statements in Section 51.901(b) and the *USF/ICC Transformation Order* upon which AT&T relies. The Commission has never explicitly repealed Section 61.38. Aureon Legal Analysis, Part II.C. Therefore, being a dominant carrier, Aureon's tariff rates are properly calculated in accordance with Section 61.38.

92. Aureon admits that the CEA service provided by Aureon is an exchange access service, but denies the allegations in this paragraph to the extent they infer that a CEA service provider like Aureon is subject to the specific rule applicable to only ILECs, or the specific rule applicable to only CLECs. The rate cap and rate parity rules for ILECs are contained in Section 51.909 of the Commission's rules. Section 51.909 states that it applies to "Rate of Return Carriers," which Section 51.903(g) specifically defines as ILECs. Aureon is not an ILEC. Aureon Legal Analysis, Part II.B. The rate cap and rate parity rules for CLECs are contained in Section 51.911. Aureon is not a CLEC. Aureon Legal Analysis, Part II.A. These specific rules, which expressly address the LEC rate caps and rate parity requirements, do not apply to CEA providers. Their scope is not broadened by the general definition of LEC contained in 47 U.S.C. § 153(32). Aureon Legal Analysis, Part II.C; *see also supra* ¶¶ 90-91. Therefore, Aureon's CEA tariff rate was properly calculated in accordance with Section 61.38 of the Commission's rules applicable to dominant carriers like Aureon.

93. Aureon admits that the quoted language is contained in the *FCC 214 Order* and that the CEA service provided by Aureon is an exchange access service, but denies the allegations in this paragraph to the extent they infer that a CEA service provider like Aureon is subject to the

specific rule applicable to only ILECs or the specific rule applicable to only CLECs.[39] The specific rules, Sections 51.909 and 51.911, which expressly address the LEC rate caps and rate parity requirements. Their scope is not broadened by the general definition of LEC contained in Section 51.5. Furthermore, the general definition of LEC in Section 51.5 does not repeal the specific regulation of dominant carriers contained in Section 61.38. Aureon Legal Analysis, Part II.C; *see also supra* ¶¶ 90-92. Therefore, Aureon's CEA tariff rate was properly calculated in accordance with Section 61.38 of the Commission's rules applicable to dominant carriers like Aureon.

94. Aureon admits that the quoted language is contained in Aureon's CEA tariff and that the CEA service provided by Aureon is a switched access service, but denies that a CEA service provider like Aureon is subject to the specific rule applicable to only ILECs in Section 51.909, or the specific rule applicable to only CLECs in Section 51.911. Those specific rules, which expressly address the LEC rate caps and rate parity requirements, do not apply to CEA providers. Their scope is not broadened by general references to switched access service in Aureon's tariff. Furthermore, Aureon's tariff rates have always been regulated under the specific regulation for dominant carriers contained in Section 61.38. Aureon Legal Analysis, Part II.C; *see also supra* ¶¶ 90-93.

95. Aureon admits that the CEA service provided by Aureon is a switched access service, but denies that the purpose and benefits of CEA service are limited as AT&T alleges. In addition to equal access, the Commission approved CEA service to provide modern information services and a level of traffic concentration for both originating and terminating traffic necessary

[39] The rate cap and rate parity rules for ILECs are contained in Section 51.909 of the Commission's rules. Section 51.909 states that it applies to "Rate of Return Carriers," which Section 51.903(g) specifically defines as ILECs. Aureon is not an ILEC. Aureon Legal Analysis, Part II.B. The rate cap and rate parity rules for CLECs are contained in Section 51.911. Aureon is not a CLEC. Aureon Legal Analysis, Part II.A.

to foster competition with AT&T in rural Iowa. *See supra* ¶¶ 33, 64. Furthermore, the Commission approved CEA service for all types of terminating traffic, and CEA service for access stimulation terminating traffic provides the same benefits for AT&T's smaller competitors as CEA service for other types of terminating traffic. Aureon Legal Analysis, Parts III and IV; *see also supra* ¶¶ 36, 65, 72-73.

96. Aureon admits that it has made statements regarding the general definition of LEC contained in 47 U.S.C. § 153(32), but denies AT&T's allegations that a CEA service provider like Aureon is subject to the specific rule applicable to only ILECs in Section 51.909, or the specific rule applicable to only CLECs in Section 51.911. These specific rules, which expressly address the LEC rate caps and rate parity requirements, do not apply to CEA providers. Their scope is not broadened by the general definition of LEC contained in 47 U.S.C. § 153(32). Aureon Legal Analysis, Part II.C; *see also supra* ¶ 92. Furthermore, AT&T is misleading with its mischaracterization of the Iowa federal district court's opinion. The Iowa federal district court did not conclude that INS is a LEC. Rather, that court held:

> The Court finds the regulatory classification of INS is not pertinent given this Court's essential determination of the validity of the IUB decision. In other words, the Court finds it need not resolve whether INS is acting as an LEC with respect to the traffic at issue. As the Court concludes above, the Board determined the traffic at issue is local and strongly suggested the parties, including INS, engage in negotiations to resolve the disputes concerning the traffic at issue. As a result of this ruling, INS' regulatory classification becomes irrelevant for purposes of engaging in negotiations pursuant to the Board's lawful orders.[40]

No court has concluded that Aureon is a LEC.

97. Aureon admits that it has filed deemed lawful tariffs based upon the general definition of LEC contained in 47 U.S.C. § 153(32), but denies AT&T's allegations that a CEA

[40] *Iowa Network Servs., Inc. v. Qwest Corp.*, 385 F. Supp.2d 850, 871 (S.D. Iowa 2005).

service provider like Aureon is subject to the specific rule applicable to only ILECs in Section 51.909, or the specific rule applicable to only CLECs in Section 51.911. These specific rules, which expressly address the LEC rate caps and rate parity requirements, do not apply to CEA providers. Their scope is not broadened by the general definition of LEC contained in 47 U.S.C. §§ 153(32) and 204(a)(3). Aureon Legal Analysis, Part II.C; *see also supra* ¶¶ 92, 96. Furthermore, the Description and Justification that Aureon filed with its tariff expressly states that "INAD [Iowa Network Access Division] is neither an ILEC nor a CLEC."[41]

98. Aureon denies the allegations in this paragraph. The specific rate cap and rate parity rules, Sections 51.909 and 51.911, apply only to ILECs and CLECs respectively, and Aureon is neither an ILEC nor a CLEC. Aureon Legal Analysis, Part II; *see also supra* ¶¶ 86-96.

99. Aureon admits that it has not revised its rates as a consequence of LEC rate caps that do not apply to CEA service providers. The LEC rate caps for non-dominant ILECs and CLECs that serve end users are not applicable to a dominant carrier like Aureon that is not an ILEC or CLEC and provides CEA service which does not serve end users. Aureon Legal Analysis, Part II.

100. Aureon denies that it was required to reduce its intrastate CEA tariff rate. Section 51.909 of the Commission's rules only requires ILECs to reduce their intrastate rates, and Aureon is not an ILEC. Aureon Legal Analysis, Part II.B. Furthermore, Section 51.911 only requires CLECs to reduce their intrastate rates, and a CEA service provider like Aureon is not a CLEC. Aureon Legal Analysis, Part II.A.

101. Aureon denies that the CEA tariff rates are unlawful, or that AT&T has properly withheld amounts billed by Aureon. As Aureon was required to do as a dominant carrier, Aureon

[41] Ex. 15, Aureon's 2016 Tariff Filing, Introduction, Overview and Rate Development at 1.

calculated the CEA tariff rate in compliance with Section 61.38 of the Commission's rules, and the CEA tariff rates were properly billed to AT&T for all traffic that AT&T routed over the CEA network. The LEC rate caps do not apply to Aureon because it is a CEA provider, and not an ILEC or CLEC. Aureon Legal Analysis, Part II. Furthermore, while capping the rates of non-dominant CLECs and ILECs, the Commission expressly recognized that there would be exceptions. Under the title, "Implementation," Section 51.905(c) states: "Nothing in this section shall be construed to require a carrier to file or maintain a tariff or to amend an existing tariff if it is not otherwise required to do so under applicable law."[42] Therefore, Section 51.905(c) mandates changes to CEA tariff rates only when required by Section 61.38 because CEA providers are neither non-dominant CLECs nor ILECs.

102. Aureon denies the allegations in this paragraph. AT&T's access stimulation allegations are clearly meritless, as the Commission's access stimulation rules only apply to LECs that serve end users (not to CEA providers with no end users), and Aureon is not a party to any access revenue sharing agreement, which is an essential element of access stimulation. Aureon Legal Analysis, Part IV; F. Hilton Decl. ¶ 15. Even if, *arguendo*, Aureon was engaged in access stimulation, which it is not, the Commission's rules would not require any reduction in Aureon's tariff rates. For a Section 61.38 carrier engaged in access stimulation, the Commission rejected a "benchmark to the BOC rate." *USF/ICC Transformation Order*, 26 FCC Rcd. at 17885, ¶ 687. Instead, a Section 61.38 carrier must reduce its tariff rates "unless the costs and demand . . . were reflected in its most recent tariff filing." *Id.* at 17884, ¶ 685. The traffic and cost studies submitted with Aureon's most recent tariff filing reflected costs and demand, including the additional facility costs and traffic on Aureon's network resulting from access stimulation by carriers other than

[42] 47 C.F.R. § 51.905(c).

Aureon.[43] F. Hilton Decl. ¶ 19. Therefore, Aureon's filed tariff rates fully comply with the Commission's rules and the Communications Act, and AT&T is required to render payment of those tariff rates for all traffic AT&T routed over the CEA network.

103. Aureon admits that interstate CEA minutes-of-use increased prior to 2012, but denies that such traffic data is relevant to this dispute. Due to the two-year statute of limitations, the relevant time period for this complaint proceeding is subsequent to 2012. Aureon's traffic volume for CEA service began decreasing in 2012 and by 2016 had decreased by more than 1 billion minutes annually, which represents more than a 26% decline in CEA traffic volume. J. Schill Decl. ¶ 30. This decline in CEA traffic volume is primarily due to a huge decrease in traffic that Aureon assumes is related to access stimulation by subtending LECs. The annual traffic volume that Aureon assumes is the result of access stimulation by subtending LECs decreased by more than 912 million minutes between 2011 and 2016. *Id.*

104. Aureon admits that the quoted language is found in the cited opinion, but denies that the quoted language is relevant to the resolution of this dispute because Aureon is not a party to an access revenue sharing agreement, has never engaged in access stimulation, and bills rates under Section 61.38 of the Commission's rules that decrease as volume increases. Aureon Legal Analysis, Part IV.

105. Aureon admits that the quoted language is found in the cited opinion and rules, but denies that the quoted language is relevant to the resolution of this dispute. Aureon is not engaged in access stimulation as defined by that Commission rule because Aureon is not a party to an access revenue sharing agreement, is not a LEC that provides service to end users, and bills rates under

[43] *See generally* Ex. 15, Aureon's 2016 Tariff Filing.

Section 61.38 of the Commission's rules that decrease as volume increases. Aureon Legal Analysis, Part IV.

106. Aureon admits that the quoted language is found in the cited opinion, but denies the inference that Aureon is engaged in access stimulation. The traffic ratio only creates a rebuttable presumption, and Aureon has rebutted the presumption by demonstrating that Aureon is not a party to any access revenue sharing agreement. Furthermore, the access stimulation rules are not applicable to Aureon because it is not a LEC that provides service to end users. Aureon Legal Analysis, Part IV.

107. Aureon admits that Aureon has billed AT&T for more terminating traffic than originating traffic, but denies that Aureon is engaged in access stimulation. Aureon has rebutted the presumption created by the terminating-to-originating traffic ratio by demonstrating that Aureon is not a party to any access revenue sharing agreement. Furthermore, the access stimulation rules are not applicable to Aureon because it is not a LEC that provides service to end users. Aureon Legal Analysis, Part IV.

108. Aureon admits that it has stated that Aureon is not a party to an access revenue sharing agreement, but denies that the access stimulation presumption has not already been rebutted or that AT&T's interrogatories are necessary. Because the access stimulation presumption created by the traffic ratio has already been rebutted by Aureon, AT&T's interrogatories on this issue are unwarranted. All the Commission requires to rebut the presumption is a carrier's officer certifying that the carrier "has not been, or is no longer engaged in access revenue sharing."[44] Aureon has rebutted any presumption that Aureon is involved in

[44] *USF/ICC Transformation Order*, 26 FCC Rcd. at 17889, ¶ 699.

access stimulation by providing AT&T with a sworn affidavit from an Aureon officer attesting that Aureon is not a party to any access revenue sharing agreement.[45]

109. Aureon admits that it has entered into CEA participation agreements with LECs, as required by the Iowa Utilities Board, but denies that those CEA participation agreements are access revenue sharing agreements. Those participation agreements (also referred to as traffic agreements) implement the Iowa Utilities Board's requirement that Aureon enter into a participation agreement prior to providing CEA service to IXCs with respect to a particular LEC's exchange.[46] F. Hilton Decl. ¶ 20. The purpose of the traffic agreements with Great Lakes and other LECs are to obtain the LEC's agreement to connect to the CEA network so that Aureon can provide CEA service *to* IXCs that desire access to that LEC's exchange. *Id.* ¶ 21. The terms of the traffic agreements with Great Lakes and other LECs are nearly identical to the terms of all other CEA participation agreements since they were instituted in 1988 as a consequence of the Iowa Utilities Board's orders requiring such traffic agreements. *Id.* ¶ 20. None of the traffic agreements with any LEC involve net payments or any other form of revenue sharing. *Id.* The Iowa Supreme Court affirmed the Iowa Utilities Board's approval of the traffic agreements and found the terms of those agreements to be lawful. *Nw. Bell Tel. Co.*, 477 N.W.2d at 687 ("the board's approval of the agreements between INS and the PTC's for the exclusive provision of terminating access services was properly granted and not violative of either antitrust law or the Iowa Constitution").

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[45] Ex. 25, Frank Hilton Declaration at ¶ 12, INS' Reply to AT&T's Opposition to Motion for Summary Judgment on Tariff Claims, *Iowa Network Services, Inc. v. AT&T Corp.*, No. 14-3439 (D.N.J. June 8, 2015) ("INS is not a party to an access revenue sharing agreement").

[46] Ex. 29, *IUB Rehearing Order*, 1988 Iowa PUC Lexis 1, slip op. at 4-5 ("[p]ursuant to their participation agreements with INS [Aureon], the [participating telephone companies] PTCs will be allowed to require at their option that *all* terminating traffic be routed over the INS network and INS will be allowed to charge its CEA rate for all such terminating traffic") (emphasis added).

110. Aureon denies the allegations in this paragraph. AT&T mischaracterizes the CEA participation agreements (also referred to as traffic agreements) as involving a service provided to LECs. The traffic agreements do not involve any service provided to LECs. Rather, the service described in the traffic agreements is CEA service, which is provided to IXCs. The purpose of the traffic agreements is to obtain the agreement of the LEC to connect to the CEA network so that Aureon can provide CEA service *to the IXCs* that desire CEA service to that LEC's exchange. F. Hilton Decl. ¶ 20. As the traffic agreements do not provide any service to LECs, there is no service for which Aureon would charge LECs under those agreements. Instead, the traffic agreements state that Aureon will charge IXCs for CEA service in accordance with the CEA tariffs.[47] Therefore, the traffic agreements do not provide a net payment to LECs, or share Aureon's access revenue with LECs.

111. Aureon denies the allegations in this paragraph. Aureon has not made net payments to or shared its access revenue with any free conference call company or other entity. F. Hilton Decl. ¶ 15. Furthermore, Great Lakes and other CLECs can complete access stimulation traffic without routing that traffic over Aureon's network. In fact, Aureon recently learned from documents received from AT&T in discovery that most access stimulation traffic in Iowa is *not* routed over Aureon's network. **[[BEGIN THIRD PARTY HIGHLY CONFIDENTIAL]]** [redacted] **[[END THIRD PARTY HIGHLY CONFIDENTIAL]]** By contrast, Aureon's interstate CEA minutes for 2013 for all traffic routed over the CEA network by all IXCs was only 2,786,846,408.[48]

[47] *See, e.g.*, Ex. 65, Aureon-Great Lakes Traffic Agreement (Aureon_00091, 00096).

[48] Ex. 14, Aureon's 2014 Tariff Filing, Introduction, Overview and Rate Development at 2.

Clearly, CLECs in Iowa do not need the CEA network in order to engage in access stimulation and are not using the CEA network for the vast majority of their traffic.

112. Aureon denies that the traffic agreements require all traffic to be routed over the CEA network to a CLEC's exchange as a consequence of a quid pro quo. As discussed *supra* ¶ 110, the traffic agreements do not include a charge to LECs because the traffic agreements do not provide any service to LECs. The traffic agreements require all switched access traffic to the end office of a participating LEC to be routed over the CEA network in order to implement the Commission's CEA mandatory use policy. Aureon Legal Analysis, Parts III and V; *see also supra* ¶ 36. Furthermore, the contractual provision requiring all traffic to a participating LEC's exchange to be routed over the CEA network could not involve a quid pro quo with Great Lakes, as that contractual provision was approved and upheld as lawful by the Iowa Supreme Court in 1991 – which was prior to the very existence of Great Lakes. *Nw. Bell Tel. Co.*, 477 N.W.2d at 687 ("the board's approval of the agreements between INS and the PTC's for the exclusive provision of terminating access services was properly granted and not violative of either antitrust law or the Iowa Constitution"). Aureon also denies that its CEA revenue has increased during the time period relevant to this dispute. Aureon's interstate CEA gross revenue decreased by $11,303,912 from $31,419,869 in 2011 to $20,115,957 in 2015, which constitutes a revenue decrease of nearly 36%. J. Schill Decl. ¶ 30. Aureon's 2013 interstate rate of return was only 3.03%. Aureon experienced a negative 343.36% interstate rate of return for 2015, and an overall negative 219.08% rate of return for the 2014/2015 monitoring period.[49] As contemplated in its state and federal

[49] *See* Ex. 15, Aureon's 2016 Tariff Filing, Introduction, Overview and Rate Development at 1.

authorizations, Aureon has used its revenue from CEA service to provide modern information services and advanced network services to rural Iowa.[50]

113. Aureon denies the allegations in this paragraph. The CEA participation agreements between Aureon and LECs are not access revenue sharing agreements. *See supra* ¶¶ 109-112. Moreover, the CEA participation agreements (or traffic agreements) are not like the access revenue sharing agreements in *AT&T Corp. v. All American Tel. Co*., Public Notice, 28 FCC Rcd. 3477 (2013) ("*Beehive*"). That case involved an access revenue sharing agreement between Beehive and a conferencing service provider named Joy Enterprises as well as access revenue sharing between Beehive and sham CLEC entities created by Beehive. "Beehive and Joy entered into an access revenue-sharing arrangement in which Beehive paid Joy a portion of Beehive's tariffed access charges." *Id*. at 3480, ¶ 11. "Although e-Pinnacle was nominally the CLEC billing AT&T, it continued sharing revenue with Beehive." *Id.* at 3489 n. 123. By contrast, Aureon is not a party to an access revenue sharing agreement and has not shared its access revenue with any entity. F. Hilton Decl. ¶ 15. Also, unlike the rates in *Beehive*, Aureon's non-distance sensitive CEA tariff rate does not increase when calls are transported a longer distance, and pursuant to Section 61.38, the CEA tariff rate decreases as traffic volume increases. The annual traffic volume that Aureon assumes is the result of access stimulation by subtending LECs decreased by more than 912 million

[50] *FCC 214 Order*, 3 FCC Rcd. 1468, ¶ 4, and 1474,¶ 38 (the CEA network will "speed the availability of high quality varied competitive services to small towns and rural areas"); Ex. 28, *State Authorization*, 1988 Iowa PUC Lexis 1, slip op. at 10 ("the concentration will benefit the general public in Iowa by assuring that a substantial portion of rural Iowa will have a network in place to deliver information services. It would not be desirable to deny hundreds of thousands of Iowans the opportunity to obtain information services as those become available. A network such as the one to be provided by INS provides the means to assure timely access to information services in rural Iowa"); *Nw. Bell Tel. Co.*, 477 N.W.2d at 681 ("the network will also offer 'modern information systems'").

minutes between 2011 and 2016. J. Schill Decl. ¶ 30. Aureon's interstate CEA gross revenue decreased by nearly 36% between 2011 and 2015.[51] *Id.*

114. Aureon denies the allegations in this paragraph. Aureon is not engaged in access stimulation and does not have an access revenue sharing agreement with any entity. F. Hilton Decl. ¶ 15. Aureon is not a CLEC and its rates are not regulated as a CLEC. Aureon Legal Analysis, Part II. Instead, Aureon is a dominant carrier with rates regulated under Section 61.38 of the Commission's rules. Even if Aureon were involved in access stimulation, which it is not, the Commission determined in the *USF/ICC Transformation Order* that Section 61.38 carriers engaged in access stimulation are required to file interstate access tariffs based on projected costs and demand pursuant to Section 61.38.[52] The traffic and cost studies submitted with Aureon's most recent tariff filing reflected costs and demand, including the additional facility costs and traffic on Aureon's network resulting from access stimulation by carriers other than Aureon.[53] F. Hilton Decl. ¶ 19. Therefore, Aureon's CEA tariff rate is just and reasonable. Aureon Legal Analysis, Part VI.

115. Aureon denies the allegations in this paragraph. Aureon has not engaged in access stimulation, is not a party to an access revenue sharing agreement, and was not required to further reduce its CEA tariff rates. As required by Section 61.38, Aureon's CEA tariff rate has already been reduced due to the traffic volume that AT&T contends is the result of access stimulation by third parties. F. Hilton Decl. ¶ 19. The Commission only required rate reductions by Section 61.38 carriers that had not already reduced their rates to reflect increases in traffic volume.

[51] *See* Ex. 12, Aureon's 2012 Tariff Filing, Introduction, Overview and Rate Development at 2; Ex. 15, Aureon's 2016 Tariff Filing, Introduction, Overview and Rate Development at 2.

[52] *USF/ICC Transformation Order*, 26 FCC Rcd. at 17884, ¶ 685.

[53] *See generally* Ex. 15, Aureon's 2016 Tariff Filing.

USF/ICC Transformation Order at 17884, ¶ 685 (a Section 61.38 carrier engaged in access stimulation must reduce its tariff rates "unless the costs and demand . . . were reflected in its most recent tariff filing"). Therefore, if *arguendo* Aureon was engaged in access stimulation, which it is not, Aureon would not be required to reduce its rates further because its rates have already been reduced to reflect costs and demand.

116. Aureon denies the allegations in this paragraph. Aureon was not required by the Commission's access stimulation rules to reduce Aureon's CEA tariff rate because Aureon has not engaged in access stimulation and is not a party to an access revenue sharing agreement. Aureon Legal Analysis, Part IV. Furthermore, if *arguendo* the access stimulation rules applied, which they do not, Aureon has already complied with those rules by reducing its CEA tariff rate to reflect costs and demand in accordance with Section 61.38. *See supra* ¶ 115.

117. Aureon denies the allegations in this paragraph. Aureon is not a CLEC because the Commission has classified CEA providers like Aureon as dominant carriers. Aureon Legal Analysis, Part II.A. Aureon's CEA tariff rates have never been regulated like a CLEC's rates because, as a dominant carrier, Aureon's rates must be calculated in compliance with Section 61.38 of the Commission's rules. Furthermore, CEA service is not provided to CLECs. Instead, CEA service is provided to IXCs. Aureon's CEA service has enabled AT&T's smaller competitors to serve hundreds of small towns and rural areas through a significant level of rural traffic concentration and efficient and affordable access to a more than 2,700 mile network offering comprehensive coverage without any increase in interstate transport charges due to longer rural distances. F. Hilton Decl. ¶¶ 22-23.

118. Aureon denies the allegations in this paragraph. Aureon's CEA rates are just and reasonable as a matter of law within the meaning of 47 U.S.C. § 201(b), because they are deemed

lawful under 47 U.S.C. § 204(a)(3). F. Hilton Decl. ¶¶ 17, 19. Aureon has filed its CEA tariff pursuant to the procedures the Commission established for filing "deemed lawful" tariffs under Section 204(a)(3) of the Communications Act. *Id.* ¶¶ 17, 19. For approximately thirty years, Aureon has calculated its CEA rate and filed its CEA tariff consistent with the *FCC 214 Order*, Section 61.38 of the Commission's rules, and Section 204(a)(3) of the Act, and the Commission has never indicated that Aureon is not a dominant carrier. *Id.* ¶ 19. Aureon further denies that it has violated Section 201(b), or that it is engaged in any manipulation of its CEA rates. The allocation of costs by Aureon to the Access Division have been performed in accordance with Section 61.38 and Parts 32, 36, 64, and 69 of the FCC's rules as they apply to dominant carriers. J. Schill Decl. ¶ 48. Aureon has properly calculated its CEA revenue requirement and CEA tariff rates using proper accounting methods and in accordance with the Commission's rules. *Id.* Aureon has utilized the same methodology for calculating its revenue requirement that was employed with its original tariff filing, *id.*, which the Commission approved after rejecting AT&T's allegation that the cost support was insufficient.[54] No "furtive concealment" has occurred in Aureon's calculations of its CEA rate, and all of the required cost support materials have been submitted as part of Aureon's Tariff Review Plan filings, which have been prepared in accordance with the FCC's rules.

119. Aureon admits the allegation in the first sentence of this paragraph that Aureon was founded in 1998 by a group of rural ILECs for the propose of providing CEA service. The second sentence contains a citation to which no response is required. Aureon denies the allegation in the third sentence regarding Aureon's Access Division and Interexchange Carrier Division (the "IXC Division") to the extent that the allegation suggests that there was anything improper about

[54] *1988 INAD Tariff Order*, 4 FCC Rcd. at 3947 ¶¶ 4, 9-10.

providing CEA service through the Access Division, and owning transmission facilities through the IXC Division. As required by the Commission's *Fifth Report and Order*,[55] Aureon created separate corporate divisions which facilitated access services (i.e., the Access Division), and IXC services (i.e., the IXC Division). J. Schill Decl. ¶ 15. The *Fifth Report and Order* required a carrier's access division to "have separate books of account, and must not jointly own transmission or switching facilities" with its IXC Division.[56] The Commission mandated this corporate arrangement in order to "protect[] against cost-shifting and anticompetitive conduct . . . ."[57] Aureon's division of its access and interexchange services between the Access and IXC Divisions, respectively, was approved by the Commission at the time it granted Aureon's Section 214 authorization in 1989.[58] Aureon admits the allegations in the fourth sentence that the Access Division provides CEA service pursuant to tariff, and that the IXC Division provides competitive services. The allegation in the fifth sentence is denied. The CEA fiber network is not owned by a separate division that AT&T calls the "Network Division." Competitive services are provided by the IXC Division, and the fiber network is also owned by the IXC Division.

120. Aureon denies the allegation in the first sentence of this paragraph. AT&T is alleging that the establishment of two separate divisions by Aureon is improper and/or unlawful, even though the separation of operations was required by the Commission in order to comply with the *Fifth Report and Order*. AT&T alleges in Paragraph 119 that CEA service should have been provided by the same entity that owned the network. Specifically, AT&T alleges that "[r]ather

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[55] *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, Fifth Report and Order, 98 F.C.C.2d 1191 (1984) ("*Fifth Report and Order*").

[56] *Id.* at 1198-99, ¶ 9.

[57] *Id.*

[58] *FCC 214 Order*, 3 FCC Rcd. at 1469, ¶ 10.

than provid[ing CEA] service from a single entity that owned both the equal access switching capability (the access tandem) as well as the transmission facilities (the fiber network), two separate operating division were established: the Access Division and the [IXC] Division."[59] Furthermore, the FCC has already considered and rejected AT&T and MCI's concerns regarding cross-subsidization, and determined that the structure proposed by Aureon would address cross-subsidization concerns. *FCC 214 Order*, 3 FCC Rcd. at 1472, ¶ 26. Moreover, "[t]o ensure that INAD is not shifting the cost of spare capacity in the high capacity underlying fiber system from [the IXC Division's] competitive services to [the Access Division's] customers," the FCC "require[d the Access Division] to submit semi-annual circuit usage reports, as requested by AT&T", because this would "permit interested parties to ascertain the reasonableness of [the Access Division's] rates." *Id.* Because cross-subsidization issues have already been addressed by the FCC, and Aureon has complied with those requirements, the remaining allegations in this paragraph are also denied.

121. The allegations in this paragraph discuss the Commission's conclusions in the FCC's *Indiana Switch 214 Order*.[60] The FCC's order speaks for itself. All other allegations are denied, including any allegations that suggest that Aureon's tariff or its CEA rates are unreasonable or unlawful. Aureon's CEA rates are just and reasonable as a matter of law within the meaning of 47 U.S.C. § 201(b) because they are deemed lawful under 47 U.S.C. § 204(a)(3). F. Hilton Decl. ¶¶ 17, 19. Aureon has filed its CEA tariff pursuant to the procedures the Commission established for filing "deemed lawful" tariffs under Section 204(a)(3) of the Communications Act. *Id.* ¶¶ 17, 19. Aureon's CEA rates are also reasonable because Aureon has properly calculated its CEA

[59] AT&T Complaint at ¶ 119.

[60] Ex. 26, *Application of Indiana Switch Access Division*, Memorandum Opinion, Order and Certificate, File No. W-P-C-5671 (FCC Apr. 10, 1986) ("*Indiana Switch 214 Order*").

revenue requirement and CEA tariff rates using proper accounting methods and in accordance with the Commission's rules. J. Schill Decl. ¶ 48.

122. The allegations in this paragraph are denied. Aureon has employed proper accounting methods, fully disclosed in cost support materials filed with the Commission how its rates were calculated, has not engaged in cross-subsidization, and has billed just and reasonable rates calculated in accordance with Section 61.38 and Parts 32, 36, 64, and 69 of the Commission's rules. Furthermore, the FCC has already considered and rejected AT&T's concerns regarding cross-subsidization, and determined that the structure proposed by Aureon would address cross-subsidization concerns. *FCC 214 Order*, 3 FCC Rcd. at 1472, ¶ 26. Moreover, "[t]o ensure that INAD is not shifting the cost of spare capacity in the high capacity underlying fiber system from [the IXC Division's] competitive services to [the Access Division's] customers," the FCC "require[d the Access Division] to submit semi-annual circuit usage reports, as requested by AT&T", because this would "permit interested parties to ascertain the reasonableness of [the Access Division's] rates." *Id.* Cross-subsidization issues have already been addressed by the FCC, and Aureon has complied with those requirements.

123. Aureon denies the allegations in the first and second sentences in this paragraph. Aureon's CEA rates are not at a "high level" as alleged by AT&T. Aureon has properly calculated its CEA revenue requirement and CEA tariff rates using proper accounting methods and in accordance with the Commission's rules. J. Schill Decl. ¶ 48. Aureon has utilized the same methodology for calculating its revenue requirement that was employed with its original tariff filing, *id.*, which the Commission approved after rejecting AT&T's allegation that the cost support was insufficient.[61] Aureon further denies AT&T's allegations in the first and second sentences of

[61] *1988 INAD Tariff Order*, 4 FCC Rcd. at 3947, ¶¶ 4, 9-10.

this paragraph that Aureon's CEA rates have not declined significantly, or that general trends in the telecommunications industry for services that are not CEA service have any applicability to this case. Between 1989 and 2017, the CEA rate declined approximately 23.4%. J. Schill Decl. ¶ 7. If AT&T and Sprint had paid the tariff rates rather than cause mounting uncollectibles, the CEA tariff rate would have decreased by 58%. Moreover, Aureon is one of only four carriers authorized by the FCC to provide CEA service in the country. *Id*. ¶ 5. As such, CEA service is not one that is comparable to access service that is generally provided by other carriers, particularly when such service may be provided in more populous areas. *Id.* Furthermore, Aureon's CEA rate is a non-distance sensitive interstate rate that incorporates both switching and transport costs, and provides access to Aureon's more than 2,700-mile fiber network. *Id.* By contrast, LECs that provide access service bill IXCs a switching and a distance-sensitive transport rate. *Id*. The fact that Aureon's CEA rate follows trends that are different than that for access charges in the general telecommunications industry is not surprising at all given that CEA service is a different service than the access service provided by LECs. J. Schill Decl. ¶ 8. The third sentence in this paragraph contains citations to which no response is required. Aureon admits the allegations in the fourth sentence that Aureon's CEA rate in 1989 was $0.0117 per minute, and that its current CEA rate is $0.00896 per minute, but denies all other allegations in that sentence. Between 1989 and 2017, the CEA rate declined approximately 23.4%. *Id.* ¶ 7. Aureon does not have any information regarding the national average traffic sensitive interstate switched access rates, and therefore, denies the allegations in the fourth sentence. Aureon further denies the allegations in the fourth sentence because the rates cited by AT&T are not rates for CEA service, and do not include any transport, and therefore, those rates are inapplicable to CEA service. Aureon's CEA rate is a non-distance sensitive rate that incorporates both switching and transport costs, and provides access to

Aureon's more than 2,700 mile fiber network. *Id.* ¶ 5. By contrast, LECs that provide access service bill IXCs a switching and a distance-sensitive transport rate. *Id.* The fact that Aureon's CEA rate follows trends that are different than that for access charges in the general telecommunications industry is not surprising at all given that CEA service is a different service than the access service provided by LECs. *Id.* ¶ 8. The fifth sentence in this paragraph contains a citation to which no response is required. The allegations in the sixth sentence are denied. Aureon has properly calculated its CEA revenue requirement and CEA tariff rates using proper accounting methods and in accordance with the Commission's rules. *Id.* ¶ 48. Aureon has utilized the same methodology for calculating its revenue requirement that was employed with its original tariff filing, which the Commission approved after rejecting AT&T's allegation that the cost support was insufficient. *Id.* Aureon further denies the allegations in the sixth sentence regarding depreciation because depreciation expense is not a major driver of the tariff calculations. *Id.* ¶ 9. Aureon further denies the allegations in the sixth sentence regarding increases in traffic volumes. Aureon's traffic volume for CEA service began decreasing in 2012, and by 2016 had decreased by 1,025,042,815 minutes annually from 3,833,504,867 minutes in 2011 to 2,808,462,052 minutes in 2016, which represents more than a 26% decline in CEA traffic volume. *Id.* ¶ 30. Aureon further denies the allegations in the sixth sentence regarding upgrades and cost efficiencies. Aureon's CEA rates do reflect cost efficiency gains resulting from upgrades to its fiber network. *Id.* ¶ 10. In its tariff filings, Aureon has reported millions of dollars in infrastructure upgrades over the past several years. *Id.* However, any gains realized by network infrastructure upgrades made to Aureon's fiber network over the past several years have been offset by increases in access stimulation traffic volumes, and the need to augment facilities in order to handle that traffic. *Id.* The seventh sentence in this paragraph contains a citation to which no response is required. The

allegations in the eighth sentence in this paragraph are denied. Aureon's current CEA rate is not excessive. Aureon has properly calculated its CEA revenue requirement and CEA tariff rates using proper accounting methods and in accordance with the Commission's rules. *Id.* ¶ 48. Aureon has utilized the same methodology for calculating its revenue requirement that was employed with its original tariff filing, which the Commission approved after rejecting AT&T's allegation that the cost support was insufficient. *Id*. Furthermore, reductions in non-CEA rates do not have any bearing on whether Aureon's CEA service rates must be reduced. *Id*. ¶ 12. Aureon's CEA rate is a single switched transport rate that provides access to more than 2,700 miles of fiber to reach all of the subtending LECs connected to the CEA network. *Id.* By contrast, non-CEA services are tailored to specific customer needs, and only involve small amounts of transport and capacities. *Id.* No conclusions can be drawn with regard to Aureon's CEA rates from the reduction in rates for non-CEA services. *Id.* The ninth sentence in this paragraph contains a citation to which no response is required.

124. Aureon denies the allegations in this paragraph. As required by the Commission's *Fifth Report and Order*, Aureon created separate corporate divisions which facilitated access services (i.e., the Access Division), and IXC services (i.e., the IXC Division). J. Schill Decl. ¶ 15. The *Fifth Report and Order* required a carrier's access division to "have separate books of account, and must not jointly own transmission or switching facilities" with its IXC Division.[62] The Commission mandated this corporate arrangement in order to "protect[] against cost-shifting and anticompetitive conduct . . . ."[63] Aureon's division of its access and interexchange services between the Access and IXC Divisions, respectively, was approved by the Commission at the time

[62] *Fifth Report and Order*, 98 F.C.C.2d at 1198-99, ¶ 9.

[63] *Id.*

it granted Aureon's Section 214 authorization in 1989.[64] The cost support for Aureon's Tariff Filings show the transport costs incurred by the Access Division by leasing facilities from the IXC division. J. Schill Decl. ¶ 16. Lease costs are directly assigned to the division to which it is charged. *Id.* As required by the FCC's rules, facilities investments are assigned to the IXC Division, and not the Access Division. *Id.* Network lease costs are periodically tested for reasonableness based on an analysis of costs derived from the IXC Division. *Id.* The data shows that the lease rate charged to the Access Division is justified based on the costs of the IXC Division. *Id.* ¶ 26.

125. Aureon denies the allegations this paragraph. As required by the Commission's *Fifth Report and Order*, Aureon created separate corporate divisions which facilitated access services (i.e., the Access Division), and IXC services (i.e., the IXC Division). J. Schill Decl. ¶ 15. The *Fifth Report and Order* required a carrier's access division to "have separate books of account, and must not jointly own transmission or switching facilities" with its IXC Division.[65] The Commission mandated this corporate arrangement in order to "protect[] against cost-shifting and anticompetitive conduct . . . ."[66] Aureon's division of its access and interexchange services between the Access and IXC Divisions, respectively, was approved by the Commission at the time it granted Aureon's Section 214 authorization in 1989.[67] The cost support for Aureon's Tariff Filings show the transport costs incurred by the Access Division by leasing facilities from the IXC Division. J. Schill Decl. ¶ 16. Account 6410 (Cable & Wire Facilities Expenses) includes the lease costs that Aureon's Access Division incurs for the amount of facilities it leases from the IXC

[64] *FCC 214 Order*, 3 FCC Rcd. at 1469, ¶ 10.

[65] *Fifth Report and Order*, 98 F.C.C.2d at 1198-99, ¶ 9.

[66] *Id.*

[67] *FCC 214 Order*, 3 FCC Rcd. at 1469, ¶ 10.

Division. Lease costs are directly assigned to the division to which the lease rate is charged. *Id.* As required by the FCC's rules, facilities investments are assigned to the IXC Division, and not the Access Division. *Id.*

126. The allegations in this paragraph are denied. Aureon's cost allocations for the Access Division's use of Aureon's fiber network are compliant with the Commission's accounting rules. *Id.* ¶ 20. Furthermore, AT&T's allegations fail to take into consideration actual allocated expenses. *Id.* ¶ 6 (discussion regarding Rhinehart's Second Observation). Account 6410 (Cable & Wire Facilities Expenses) includes the lease costs that Aureon's Access Division incurs for the amount of facilities it leases from the IXC Division. *Id.* ¶ 16. All non-lease expenses in Account 6410 are assigned to undistributed costs and allocated on the basis of Cable and Wire Facilities ("CWF") investment in Account 2410. *Id.* Since all CWF investment in Account 2410 is assigned to the IXC Division, all Account 6410 undistributed expenses are thereby assigned to the IXC Division. *Id.*

127. The allegations in this paragraph are denied. Aureon's calculation of lease costs allocated to the Access division are proper. *Id.* ¶ 21. Aureon's tariff filings and cost support are based on the best estimates and data available to the Aureon staff at the time of the filing. *Id.* ¶ 6 (discussing Rhinehart's Third Observation). Certain assumptions and forecasts are required relating to traffic patterns, trends, and other factors. *Id.* This assessment is performed using the fully distributed costs of the IXC Division apportioned among the services provided by the IXC Division. *Id.* The cost support for Aureon's tariff filings show the transport costs incurred by the Access Division by leasing facilities from the IXC Division. *Id.* ¶ 16. Mr. Rhinehart's assumptions in his analysis are fundamentally flawed, and as a result, his rate comparison analysis is completely erroneous. *Id.* Account 6410 (Cable & Wire Facilities Expenses) includes the lease

costs that Aureon's Access Division incurs for the amount of facilities it leases from the IXC Division. *Id.* Lease costs are directly assigned to the division to which the lease rate is charged. *Id.* The lease rate that the IXC Division charges the Access Division is a function of the investment and operating expenses of the IXC Division attributable to the network facilities used by the Access Division. *Id.* ¶ 6. All non-lease expenses in Account 6410 are assigned to undistributed costs and allocated on the basis of CWF investment in Account 2410. *Id.* ¶ 16. Since all CWF investment in Account 2410 is assigned to the IXC Division, all Account 6410 undistributed expenses are thereby assigned to the IXC Division. *Id.* Network lease costs are periodically tested for reasonableness based on an analysis of costs derived from the IXC Division. *Id.*

128. Aureon denies the allegations in the first and second sentences in this paragraph. Aureon has properly allocated costs between interstate and intrastate traffic. *Id.* ¶¶ 32-36. The third sentence contains a citation to which no response is required. Aureon admits the allegation in the fourth sentence contains an excerpt from Aureon's 2008 tariff filing, and states that the filing speaks for itself. All other allegations, including any suggestion that there was anything improper regarding the 2008 tariff filing, are denied. The fifth sentence contains a citation to which no response is required. Aureon admits that the allegation in the sixth sentence contains information from Aureon's 2008 tariff filing, and states that the filing speaks for itself. All other allegations, including any suggestion that there was anything improper regarding the PIU factor reported in the 2008 filing, are denied. Furthermore, the change in the PIU was due to, among other things, network upgrades that resulted in more accurate identification of interstate calls. *Id.* ¶ 34. Aureon implemented a new billing system that converted the jurisdiction calculation from using jurisdiction information parameters ("JIPs") and location routing numbers ("LRNs") to originating and terminating numbers. *Id.* This change resulted in more accurate identification of interstate

calls because, while most Iowa LECs included JIP and/or LRN information with their call data, traffic from other carriers did not include that information. *Id.* Before the upgrade, the identification of intrastate traffic was considerably more accurate than the identification of interstate traffic. *Id.* Since the jurisdiction of "unknown traffic" was proportioned based on the volume of "known" traffic, improving the identification of interstate traffic not only increased the number of calls that could be identified by call records, it also altered the PIU that was applied to unknown traffic. *Id.* Properly developed PIU factors reported by IXCs are used to allocate between jurisdictions any remaining traffic for which the jurisdiction has not been identified by Aureon's systems. *Id.* The seventh sentence contains a citation to which no response is required. The allegations in the eighth sentence are denied. Aureon did not "assign" any traffic to a particular jurisdiction. Aureon does not have any control over the jurisdiction of the traffic that is sent by IXCs to the CEA network. *Id.* ¶ 33. The intrastate and interstate traffic allocations are simply a function of the traffic on the network. *Id.*

129. The allegations in the first sentence of this paragraph are denied. Aureon was not required to "bring to the Commission's attention" changes to Aureon's PIU factor. The condition in Paragraph 32 of for *FCC 214 Order* cited by AT&T was that the state agencies approve the mandatory use policy for intrastate traffic. *FCC 214 Order*, 3 FCC Rcd. at 1473, ¶ 32; J. Schill Decl. ¶ 36. That condition was met when the Iowa Utilities Board approved the mandatory use policy for intrastate traffic.[68] The second sentence contains a citation to which no response is required. The allegations in the third sentence are denied. Aureon has properly allocated costs between interstate and intrastate traffic. J. Schill Decl. ¶¶ 32-36. The change in PIU factor was not due to an arbitrary decision by Aureon to designate more traffic as interstate. *Id.* ¶ 33. Rather,

[68] Ex. 29, *IUB Rehearing Order*, 1988 Iowa PUC Lexis 1, slip op. at 5; J. Schill Decl. ¶ 36.

this was due to upgrades in Aureon's equipment to better track the jurisdiction of the calls on the CEA network. *Id.* The fourth sentence contains a citation to which no response is required. The allegations in the sixth sentence are denied. Aureon is not involved in access stimulation. *Id.* ¶¶ 10, 31, 38. Furthermore, there has been no shifting of costs to interstate ratepayers. Aureon does not have any control over the jurisdiction of the traffic that is sent by IXCs to the CEA network. *Id.* ¶ 33. The intrastate and interstate traffic allocations are simply a function of the traffic on the network. *Id.* The seventh sentence contains a citation to the FCC's *USF/ICC Transformation Order*, and Aureon denies that that decision is applicable to this case.

130. The allegations in this paragraph are denied. In 2007, Aureon upgraded its CEA switches, which enabled Aureon's billing system to process and download call records directly from the switch, rather than from a legacy third-party system that had been in place for years. *Id.* ¶ 34. Around that same timeframe, Aureon implemented a new billing system to identify call jurisdiction based on originating and terminating numbers. *Id.* This change resulted in more accurate identification of interstate calls. *Id.*

131. The allegations in this paragraph are denied. Aureon's traffic forecasts are reliable given the information Aureon had at the time the forecasts were made. *Id.* ¶¶ 37-42. Furthermore, Aureon's traffic forecasts are actually more accurate than Mr. Rhinehart suggests. *Id.* ¶ 39. For the test periods examined by Mr. Rhinehart, the actual demand in all but two test periods were within 10% of traffic forecasts, and three test periods were within approximately 5-6% of traffic forecasts. *Id.* ¶ 40.

132. The allegations in this paragraph are denied. Uncollectible revenues were part of Aureon's revenue requirement in the past, and Aureon has not been paid for services already rendered. *Id.* ¶ 43. The uncollectible revenues represent amounts that Aureon properly billed for

CEA service provided under its CEA tariff to other carriers. *Id.* Uncollectible revenues are a known direct cost, i.e., a reduction in net operating income, of providing CEA service. *Id.* ¶ 44. As such, Aureon properly included the cost of uncollectible revenues in its cost studies as those revenues directly relate to the forecast minutes-of-use that are also used in those studies. *Id.* AT&T itself is directly responsible for large amounts of uncollectible expenses required to be included in Aureon's 2016 tariff filing. *Id.* ¶ 10. In recent years, AT&T has become a primary cause of the bad debt reserve as AT&T has refused to fully pay for CEA service Aureon properly billed under its CEA tariff. *Id.* ¶ 46.

133. The allegations in this paragraph are denied. The inclusion of uncollectible revenues in Aureon's revenue requirement is appropriate. *Id.* ¶¶ 43-46. Uncollectible revenues were part of Aureon's revenue requirement in the past, and Aureon has not been paid for services already rendered. *Id.* ¶ 43. The uncollectible revenues represent amounts that Aureon properly billed for CEA service provided under its CEA tariff to other carriers. *Id.* ¶ 44. Uncollectible revenues are a known direct cost, i.e., a reduction in net operating income, of providing CEA service. *Id*. As such, Aureon properly included the cost of uncollectible revenues in its cost studies as those revenues directly relate to the forecast minutes-of-use that are also used in those studies. *Id.* AT&T itself is directly responsible for large amounts of uncollectible expenses required to be included in Aureon's 2016 tariff filing. *Id.* ¶ 10. In recent years, AT&T has become a primary cause of the bad debt reserve as AT&T has refused to fully pay for CEA service Aureon properly billed under its CEA tariff. *Id.* ¶ 46.

134. Aureon repeats and re-alleges each and every response contained in Paragraphs 1 to 133 of this Answer as if set forth fully herein.

135. Aureon admits that the quoted language is contained in Section 201(b) of the Communications Act.

136. Aureon denies the allegations in this paragraph. It was just, reasonable, and lawful for Aureon to bill AT&T the filed tariff rate for all terminating traffic that AT&T routed over the CEA network, including such traffic that AT&T contends is access stimulation traffic. The Commission has authorized CEA service for all types of terminating traffic, including conference calls, and the purpose of CEA service broadly encompasses the provision of modern information services and advanced network features. Furthermore, Aureon has not engaged in access stimulation because it is not a party to any access revenue sharing agreement with anybody, and was not required by the access stimulation rules to further reduce its CEA tariff rate – which has already been reduced under Section 61.38 to reflect costs and demand. F. Hilton Decl. ¶ 15. Section 61.38 of the Commission's rules ensures that Aureon's CEA tariff rate remains just and reasonable by requiring a reduction in rates when traffic volume increases. Consequently, AT&T's smaller competitors and their consumers benefit from a lower CEA tariff rate than would result if AT&T was permitted to remove AT&T's traffic from the CEA network via direct trunks to LEC end offices. It was reasonable for Aureon to enter into traffic agreements in order to implement the Commission's CEA mandatory use policy, which has increased competition with AT&T in rural Iowa by keeping sufficient traffic on the CEA network necessary to maintain an affordable CEA tariff rate for AT&T's smaller competitors. *Id.* ¶¶ 22-23. Those CEA participation agreements are not access revenue sharing agreements. Aureon is also not subject to the LEC rate caps and rate parity rules because Aureon is neither a non-dominant ILEC nor a CLEC, but a dominant carrier providing CEA service subject to Section 61.38. Aureon has employed proper accounting and fully complied with Parts 32, 36, 64, and 69 of the Commission's rules in

calculating its CEA tariff rate. Therefore, Aureon's CEA tariff rates are just and reasonable, and it was lawful for Aureon to bill those tariff rates to AT&T for all traffic that AT&T routed over the CEA network.

137. Aureon denies these allegations for the reasons given in Paragraphs 62 through 75 above. The Commission authorized Aureon to provide CEA service for both originating and terminating traffic, to foster rural competition with AT&T through rural traffic concentration, and to make modern information services available in rural Iowa. CEA service is defined in the tariff to encompass all types of terminating traffic. The service that Aureon provided to AT&T for traffic that AT&T contends is access stimulation terminating traffic was CEA service as defined in the tariff. F. Hilton Decl. ¶ 10. Furthermore, the minimum monthly volume of 25 million terminating minutes for the CEA volume discount tariff rate is further evidence that CEA service is provided for large volumes of terminating traffic. INAD Tariff F.C.C. No. 1, § 6.7.3, 2nd Revised Page 137 (Ex. 51). Therefore, it was reasonable under Section 201(b) for Aureon to bill the tariff rates to AT&T for terminating traffic that AT&T contends is access stimulation traffic.

138. Aureon denies these allegations for the reasons given in Paragraphs 76 through 80 above. The CEA network was designed to reduce the costs of competing in rural Iowa for AT&T's smaller competitors even though it would increase costs for AT&T. In approving Aureon's CEA network, the Commission concluded that "[a]lthough the network INAD [Iowa Network Access Division] would lease will increase the cost of access, we judge that the benefits of added competition should outweigh those costs, especially in view of the comprehensive coverage of the network." *FCC 214 Order*, 3 FCC Rcd. at 1474, ¶ 38. In approving Aureon's CEA network, the Commission adopted a CEA mandatory use policy to ensure that sufficient traffic volume remained on the CEA network in order to maintain its affordability for AT&T's smaller

competitors and thereby stimulate rural competition. Aureon Legal Analysis, Parts III and V. The CEA mandatory use policy requires AT&T to route its traffic to the exchanges of CEA subtending LECs over the CEA network, rather than remove AT&T's traffic from the CEA network via direct trunks to LEC end offices. All IXCs and their customers will benefit from the lower CEA tariff rate that will result from the routing of all terminating traffic, including access stimulation traffic, over the CEA network. F. Hilton Decl. ¶¶ 22-23. If AT&T were permitted to route its traffic over direct trunks to the LEC end offices, the removal of that AT&T traffic from the CEA network would significantly increase the CEA tariff rate for AT&T's competitors because Section 61.38 of the Commission's rules requires Aureon's CEA tariff rate to increase as traffic volume decreases. Aureon Legal Analysis, Part VI. It is most efficient and cost effective to continue to require AT&T to route AT&T's traffic (which now accounts for 75% of all CEA traffic) over the CEA network in order to foster rural competition by keeping affordable the non-distance-sensitive interstate CEA rate paid by all IXCs and their consumers for access to the comprehensive, more than 2,700-mile rural CEA network. *See supra* ¶¶ 33, 35, 47.

139. Aureon denies these allegations for the reasons given in Paragraphs 81 through 85 above. The traffic agreements (or CEA participation agreements) have fostered rural competition with AT&T by implementing the Commission's CEA mandatory use policy, which the Iowa Supreme Court held to be lawful.[69]

[69] *Nw. Bell Tel. Co.*, 477 N.W.2d at 684, 687 ("unless INS provided terminating access as well as originating access, all the costs of operating the network would have to be recovered in the provision of originating access only. Such a result would frustrate one of the main goals of the INS system since the higher costs, which would be passed along to the interexchange utilities, would deter the entry of competition . . . the board's approval of the agreements between INS and the PTC's for the exclusive provision of terminating access services was properly granted and not violative of either antitrust law or the Iowa Constitution").

140. Aureon denies these allegations for the reasons given in Paragraphs 86 through 101 above. The non-dominant LEC rate caps and rate parity rules do *not* apply to dominant carriers and do *not* apply to CEA service providers without end users that are neither ILECs nor CLECs. Aureon Legal Analysis, Part II. Aureon has not violated the rate caps and rate parity rules that the Commission adopted for non-dominant ILECs and CLECs because Aureon is not a non-dominant ILEC or CLEC. The rate cap and rate parity rules for ILECs are contained in Section 51.909 of the Commission's rules. Section 51.909 states that it applies to "Rate of Return Carriers," which Section 51.903(g) specifically defines as ILECs. Aureon is not an ILEC. Aureon Legal Analysis, Part II.B. The rate cap and rate parity rules for CLECs are contained in Section 51.911. Aureon is not a CLEC. Aureon Legal Analysis, Part II.A. These specific rules, which expressly address the LEC rate caps and rate parity requirements, do not apply to CEA providers. Their scope is not broadened by the rules, definitions, and statements of general connotation upon which AT&T relies. Aureon Legal Analysis, Part II.C. Therefore, Aureon's CEA tariff rate was properly calculated in accordance with Section 61.38 of the Commission's rules applicable to dominant carriers like Aureon.

141. Aureon denies these allegations for the reasons given in Paragraphs 102 through 117 above. AT&T's access stimulation allegations are clearly meritless, as the Commission's access stimulation rules only apply to LECs that serve end users (not to CEA providers with no end users), and Aureon is not a party to any access revenue sharing agreement, which is an essential element of access stimulation. Aureon Legal Analysis, Part IV; F. Hilton Decl. ¶ 15. Furthermore, because Aureon is a dominant carrier and not a CLEC, the CEA tariff rate is calculated in accordance with Section 61.38 based on cost and demand studies rather than a benchmark to the price cap ILEC's rates. Therefore, even if, *arguendo*, Aureon was engaged in access stimulation,

which it is not, the Commission's rules would not require any reduction in Aureon's tariff rates. For a section 61.38 carrier engaged in access stimulation, the Commission rejected a "benchmark to the BOC rate." *USF/ICC Transformation Order*, 26 FCC Rcd. at 17885, ¶ 687. Instead, a section 61.38 carrier must reduce its tariff rates "unless the costs and demand . . . were reflected in its most recent tariff filing." *Id.* at 17884, ¶ 685. The traffic and cost studies submitted with Aureon's most recent tariff filing reflected costs and demand, including the additional facility costs and traffic on Aureon's network resulting from access stimulation by carriers other than Aureon.[70] F. Hilton Decl. ¶ 19. Therefore, Aureon's filed tariff rates fully comply with the Commission's rules and the Communications Act, and AT&T is required to render payment of those tariff rates for all traffic AT&T routed over the CEA network.

142. Aureon denies these allegations for the reasons given in Paragraphs 107 through 117 above. The traffic ratio only creates a rebuttable presumption, and Aureon has rebutted that presumption by demonstrating that Aureon is not a party to any access revenue sharing agreement. The CEA participation agreements with LECs (also known as traffic agreements) are not access revenue sharing agreements. F. Hilton Decl. ¶ 20. Those traffic agreements implement the Iowa Utilities Board's requirement that Aureon enter into a participation agreement prior to providing CEA service to IXCs with respect to a particular LEC's exchange.[71] F. Hilton Decl. ¶ 20. The purpose of the traffic agreements with Great Lakes and other LECs are to obtain the LEC's agreement to connect to the CEA network so that Aureon can provide CEA service *to* IXCs that desire access to that LEC's exchange. F. Hilton Decl. ¶¶ 20, 21. The Iowa Supreme Court affirmed

[70] *See generally* Ex. 15, Aureon's 2016 Tariff Filing.

[71] Ex. 29, *IUB Rehearing Order*, 1988 Iowa PUC Lexis 1, slip op. at 4-5 ("[p]ursuant to their participation agreements with INS [Aureon], the [participating telephone companies] PTCs will be allowed to require at their option that *all* terminating traffic be routed over the INS network and INS will be allowed to charge its CEA rate for all such terminating traffic") (emphasis added).

the Iowa Utilities Board's approval of the traffic agreements, and found the terms of those agreements to be lawful.[72] The terms of the traffic agreements with Great Lakes and other CLECs are nearly identical to the terms of all other CEA participation agreements since they were instituted in 1988 as a consequence of the Iowa Utilities Board's orders requiring such traffic agreements. F. Hilton Decl. ¶ 21. None of the traffic agreements with any LEC involve net payments or any other form of revenue sharing. *Id.* ¶ 20. AT&T mischaracterizes the CEA traffic agreements as involving a service provided to LECs and a quid pro quo. The traffic agreements do not involve any service provided to LECs. Rather, the service described in the traffic agreements is CEA service, which is provided to IXCs. *Id*. ¶¶ 21-22. As the traffic agreements do not provide any service to LECs, there is no service for which Aureon would charge LECs under those agreements. Furthermore, the CEA traffic agreements have not caused unreasonable rates, as AT&T alleges, because the CEA rates reflect the costs of a more than 2,700 mile network that AT&T's smaller competitors depend upon, and the CEA rates are required by Section 61.38 to decrease as traffic volume increases. It would be unreasonable to allow AT&T to use direct trunks to remove most of the traffic from the CEA common trunks and eliminate any contribution by AT&T toward recovery of the CEA revenue requirement because AT&T's smaller IXC competitors and their consumers would then be left to pay a much higher CEA rate, which would likely render CEA service and rural competition with AT&T economically unviable. *Id.* ¶ 22; *see also supra* ¶¶ 36, 65, 77.

143. Aureon denies these allegations for the reasons given in Paragraphs 115 through 117 above. Aureon has not engaged in access stimulation, is not a party to an access revenue

[72] *Nw. Bell Tel. Co.*, 477 N.W.2d at 687 ("the board's approval of the agreements between INS and the PTC's for the exclusive provision of terminating access services was properly granted and not violative of either antitrust law or the Iowa Constitution").

sharing agreement, and was not required to further reduce its CEA tariff rates. Only CLECs are required to benchmark their rates to the rates of a price cap ILEC, such as CenturyLink, but a dominant CEA carrier like Aureon is not a CLEC. Instead, a dominant carrier's rates must be calculated on the basis of cost and demand data as required by Section 61.38 of the Commission's rules. Therefore, if, *arguendo*, Aureon was engaged in access stimulation, which it is not, it would be the access stimulation rules for Section 61.38 dominant carriers that would apply, not the access stimulation benchmark rules for CLECs. The Commission's access stimulation rules for Section 61.38 carriers do not require tariff filings to reduce rates if the carrier's rates already reflect costs and demand. *USF/ICC Transformation Order* at 17884, ¶ 685 (a Section 61.38 carrier engaged in access stimulation must reduce its tariff rates "unless the costs and demand . . . were reflected in its most recent tariff filing"). Therefore, if *arguendo* Aureon was engaged in access stimulation, which it is not, Aureon would not be required to reduce its rates further because its rates have already been reduced to reflect costs and demand.

144. Aureon denies these allegations for the reasons given in Paragraphs 118 through 133 above. Between 1989 and 2017, the CEA rate declined approximately 23.4%. J. Schill Decl. ¶ 7. The CEA rate would have declined even farther if AT&T and Sprint had paid the CEA tariff rates like their IXC competitors. If Aureon had not been required to include such uncollectible expenses in the CEA revenue requirement, the CEA tariff rate would have decreased 26% from the rate in 2014 and 58% from the rate in 1989. *Id.* ¶ 10. Aureon has employed proper accounting practices and has properly accounted for its costs and expenses. *Id.* ¶ 48.

145. Aureon denies the allegations in this paragraph for the reasons given above, and in its accompanying Legal Analysis. Aureon's practices and rates are just and reasonable, and fully comply with the Communications Act.

146. Aureon denies the allegations in this paragraph for the reasons given above, and in its accompanying Legal Analysis. Aureon has lawfully billed the CEA tariff rates to AT&T on all traffic that AT&T routed over the CEA network. AT&T is obligated to pay Aureon's invoices for such CEA service, and AT&T is not entitled to refunds.

147. Aureon repeats and re-alleges each and every response contained in Paragraphs 1 to 146 of this Answer as if set forth fully herein.

148. Aureon admits that the quoted language is contained in Section 203 of the Communications Act.

149. Aureon denies these allegations for the reasons given in Paragraphs 62-75, 86-101, and 107-117 above. Aureon provided CEA service to AT&T for all terminating traffic, including access stimulation terminating traffic. CEA service is defined in Aureon's tariff as providing transport and access tandem switching for all such terminating traffic. Aureon is not subject to the LEC rate caps and rate parity rules because Aureon is neither a non-dominant ILEC nor a CLEC, but a dominant carrier providing CEA service subject to Section 61.38. Furthermore, Aureon has not engaged in access stimulation because it is not a party to an access revenue sharing agreement with anybody, and was not required by the access stimulation rules to further reduce its CEA tariff rate, which has already been reduced under Section 61.38 to reflect costs and demand. The CLEC benchmark to CenturyLink's rates is inapplicable to Aureon because Aureon is a dominant CEA carrier that is required by Section 61.38 to calculate its rates on the basis of cost and demand studies.

150. Aureon denies these allegations for the reasons given in Paragraphs 62 through 75 above. The Commission authorized Aureon to provide CEA service for both originating and terminating traffic, to foster rural competition with AT&T through rural traffic concentration, and

to make modern information services available in rural Iowa. CEA service is defined in the tariff to encompass all types of terminating traffic. The service that Aureon provided to AT&T for traffic that AT&T contends is access stimulation terminating traffic was CEA service as defined in the tariff. Therefore, the CEA tariff rate is applicable to AT&T's access stimulation terminating traffic and Aureon properly billed AT&T the tariff rate for such traffic.

151. Aureon denies these allegations for the reasons given in Paragraphs 86 through 101 above. The non-dominant LEC rate caps and rate parity rules do *not* apply to dominant carriers and do *not* apply to CEA service providers without end users that are neither ILECs nor CLECs. Aureon Legal Analysis, Part II. The rate cap and rate parity rules for ILECs are contained in Section 51.909 of the Commission's rules. Section 51.909 states that it applies to "Rate of Return Carriers," which Section 51.903(g) specifically defines as ILECs. Aureon is not an ILEC. Aureon Legal Analysis, Part II.B. The rate cap and rate parity rules for CLECs are contained in Section 51.911. Aureon is not a CLEC. Aureon Legal Analysis, Part II.A. Instead of those rate cap and rate parity rules, which are applicable to only non-dominant LECs, Aureon is required to calculate its rates pursuant to the Commission's rules for dominant carriers set forth in Section 61.38. Aureon was not required by the LEC rate caps or rate parity rules to reduce the CEA tariff rate below the level established by the Section 61.38 cost and demand data. Therefore, Aureon billed AT&T valid CEA tariff rates.

152. Aureon denies these allegations for the reasons given in Paragraphs 107 through 117 above. Aureon has not engaged in access stimulation, is not a party to an access revenue sharing agreement, and was not required to further reduce its CEA tariff rates. Only CLECs are required to benchmark their rates to the rates of a price cap ILEC, such as CenturyLink, but a dominant CEA carrier like Aureon is not a CLEC. Instead, a dominant carrier's rates must be

calculated on the basis of cost and demand data as required by Section 61.38 of the Commission's rules. Furthermore, if, *arguendo*, Aureon was engaged in access stimulation (which it is not) Aureon would not be required to reduce its rates further because its rates have already been reduced to reflect costs and demand. The Commission's access stimulation rules for Section 61.38 carriers do not require tariff filings to reduce rates if the carrier's rates already reflect costs and demand.[73] Therefore, Aureon billed AT&T valid CEA tariff rates.

153. Aureon denies the allegations in this paragraph. For the reasons given above and in Aureon's accompanying Legal Analysis, Aureon has billed AT&T tariff rates contained in valid and lawful tariffs in compliance with Section 203 of the Communications Act.

154. Aureon denies the allegations in this paragraph for the reasons given above, and in its accompanying Legal Analysis. Aureon has lawfully billed valid CEA tariff rates to AT&T on all traffic that AT&T routed over the CEA network. AT&T is obligated to pay Aureon's invoices for such CEA service, and AT&T is not entitled to refunds.

155. For all the reasons set forth above, in the accompanying Legal Analysis, and in the sworn declarations and exhibits supporting this Answer, Aureon denies that AT&T is entitled to any of the relief that it seeks. Rather, the Commission should deny AT&T's complaint, and hold that:

(i) Aureon's conduct and tariffs comply with Sections 201(b) and 203 of the Communications Act;

(ii) The tariff's definition of CEA service encompasses all types of terminating traffic, Aureon provided CEA service to AT&T as defined in the CEA tariffs, and Aureon

[73] *USF/ICC Transformation Order* at 17884, ¶ 685 (a Section 61.38 carrier engaged in access stimulation must reduce its tariff rates "unless the costs and demand . . . were reflected in its most recent tariff filing").

billed valid tariff rates to AT&T for all terminating traffic, including the traffic that AT&T contends is access stimulation terminating traffic;

(iii) Aureon employed proper accounting methods and Aureon's CEA tariff rates are just and reasonable, the CEA tariff rates were properly calculated in compliance with the cost and demand studies required by Section 61.38 of the Commission's rules, prospective changes to the CEA tariff rates are unwarranted, and further investigation by the Commission of the CEA tariff rates is unnecessary;

(iv) To further support rural competition and maintain the future economic viability of the CEA network for AT&T's smaller competitors, AT&T must comply with the Commission's CEA mandatory use policy and may not use direct trunks to remove AT&T's traffic (which is now most CEA traffic) from the CEA network;

(v) Aureon did not engage in access stimulation;

(vi) Aureon's CEA traffic agreements with LECs (also referred to as CEA participation agreements) are not access revenue sharing agreements, and lawfully implement the Commission's CEA mandatory use policy;

(vii) The non-dominant LEC rate caps and rate parity rules in Sections 51.909 and 51.911 do not apply to Aureon because Aureon is a dominant CEA carrier, calculates its rates under Section 61.38, and is neither a CLEC nor ILEC;

(viii) AT&T must pay the CEA tariff rates for all traffic that AT&T routed to the CEA network;

(ix) AT&T is required by the CEA tariffs to pay late payment interest and Aureon's attorneys' fees; and

(x) AT&T is not entitled to retroactive damages or a prospective change to the CEA tariff rates.

II. AFFIRMATIVE DEFENSES

Pursuant to 47 C.F.R. § 1.724(e), Aureon hereby asserts the following Affirmative Defenses to the allegations raised by AT&T in its Formal Complaint:

A. Failure to State a Cause of Action

Plaintiff has failed to state a claim upon which relief can be granted under 47 U.S.C. §§ 201(b) and 208 of the Communications Act of 1934, as amended ("Act"). Aureon's interstate switched access service rates are just and reasonable as a matter of law within the meaning of 47 U.S.C. § 201(b), because they are deemed lawful under 47 U.S.C. § 204(a)(3). The Commission routinely denies a request for a retroactive refund of overcharges because, when rates are deemed lawful under Section 204(a)(3), there are no overcharges as a matter of law.[74] During the relevant period for this case, within the two year statute of limitations, Aureon has earned much less than its prescribed rate of return of 11.25%, and maximum rate of return of 11.5%. In 2013, Aureon's rate of return was only 3.03%, and for the 2014/2015 monitoring period, Aureon's rate of return was negative 219.08%.[75] In the Tariff Review Plan and cost support filed with the Commission, Aureon has projected that its rate of return for 2017 will be negative 171.69%. Moreover, the courts have held that a refund of tariff rates that are deemed lawful under Section 204(a)(3) is "impermissible as a form of retroactive ratemaking." *ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403, 411 (DC Cir. 2002).

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[74] *See Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, Report and Order, 12 FCC Rcd. 2170, 2175-76, ¶ 8 (1997).

[75] *See* Ex. 15, Aureon's 2016 Tariff Filing (filed June 16, 2016), Introduction, Overview and Rate Development at 1.

B. Statute of Limitations

AT&T's claims are barred by the two-year statute of limitations in Sections 415(b) and (c) of the Act.[76] Notwithstanding that Aureon is not a party to a revenue sharing agreement with any persons or entities,[77] with respect to AT&T's claims that INS shared revenues with various rural telephone companies, those are "complaints against [a] carrier[] for the recovery of damages not based on overcharges," and must be filed within two years from the time the cause of action accrues.[78] "To determine when a cause of action accrues under section 415 . . . a cause of action accrues either when a readily discoverable injury occurs or, if an injury is not readily discoverable, when the plaintiff should have discovered it."[79] AT&T filed its counterclaims against Aureon in New Jersey federal district court on August 5, 2014. In New Jersey, the date of filing of a defendant's counterclaims is the relevant date for statute of limitations purposes, and not the date of the filing of the complaint.[80] Accordingly, any AT&T claim for damages earlier than August 5, 2012 regarding alleged revenue sharing are time-barred.

Furthermore, AT&T's claim for damages for overearnings are barred by the statute of limitations in Section 415(c). In its Complaint, AT&T avers that Aureon exceeds the prices that

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[76] 47 U.S.C. §§ 415(b), (c).

[77] Declaration of Frank Hilton ¶ 15, attached hereto as Ex. B ("F. Hilton Decl.").

[78] 47 C.F.R. § 415(b).

[79] *Commc'ns Vending Corp. of Ariz. v. FCC*, 365 F.3d 1064, 1074 (D.C. Cir. 2004) (citing *MCI Telecomms. Corp. v. FCC*, 59 F.3d 1407, 1417 (D.C. Cir. 1995)).

[80] *See, e.g.*, *Rocheux Int'l of N.J., Inc. v. U.S. Merchs. Fin. Grp., Inc.*, 741 F. Supp. 2d 651, 664 (D.N.J. 2010) (Plaintiff filed its original complaint on December 21, 2006. Defendant did not file counterclaims for damages that occurred before 2006 until April 16, 2010, which was after the four-year statute of limitations had expired. Accordingly, the court ruled that defendant's counterclaims were time-barred.)

the FCC established for local exchange carriers ("LECs") in the *USF/ICC Transformation Order*,[81] and the implementing rules. AT&T's claim for retroactive damages for overearnings are conclusively barred because Aureon's centralized equal access ("CEA") tariff rates in effect during the relevant period were deemed lawful under 47 U.S.C. § 204(a)(3), and those claims are also barred by Section 415(c) to the extent they seek refunds prior to August 5, 2012. As discussed above, AT&T filed its counterclaims against Aureon on August 5, 2014, and therefore, any claims for damages two years prior to that date, i.e., before August 5, 2012, are time-barred pursuant to the two-year statute of limitations in Section 415(c).

C. Res Judicata and Collateral Estoppel.

AT&T's claims are barred by the doctrines of res judicata and collateral estoppel. Under the doctrine of res judicata, a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action.[82] Under the doctrine of collateral estoppel, a judgment in a prior suit precludes relitigation by the same parties of issues actually litigated and necessary to the outcome of the first action. The U.S. Supreme Court set forth the classic formulation of res judicata, or claim preclusion, more than a century ago:

> [T]he judgment, if rendered upon the merits, constitutes an absolute bar to a subsequent action. It is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.[83]

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[81] *Connect America Fund, et al*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011) ("*USF/ICC Transformation Order*").

[82] *TSR Wireless, LLC v. US West Commc'ns, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd. 11166, 11173–74 (2000) (citing 1B J. MOORE, FEDERAL PRACTICE ¶ 0.405[1], 622-24 (2d ed. 1974) (quoted in *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 327 (1979)).

[83] *Cromwell v. Sac Cty.*, 94 U.S. 351, 352 (1876). *See also, e.g.*, *Allen v. McCurry*, 449 U.S. 90, 94 (1980) ("a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action"); RESTATEMENT (2D) OF JUDGMENTS, §§ 19, 24, 25.

Three elements must be present before a claim will be barred by a judgment in a prior action. The prior action must have: (1) shared a common nucleus of operative facts with the subsequent action; (2) resulted in a final judgment on the merits; and (3) involved the same parties or their privies.[84] If these elements are present, res judicata operates to bar the subsequent litigation not only of the claims actually litigated in the earlier action, but also of any claims that could have been litigated in the earlier action.[85] In this case, all of the elements for res judicata are met to bar AT&T's claims.

The FCC's 1988 Section 214 proceeding and the instant case "share a common nucleus of operative facts" regarding the CEA service provided by Aureon. In both proceedings, at issue are the regulations governing CEA service provided by Aureon for the routing of long distance calls by interexchange carriers ("IXCs") to LECs that connect to Aureon's network in order to make competitive choice and advanced services available in rural areas through affordable traffic concentration. In 1988, the FCC determined that the CEA service Aureon provided required Aureon to be regulated as a dominant carrier providing exchange access service under Title II.[86] The FCC did not rule that Aureon was a rate-of-return LEC, as AT&T contends in its formal complaint. Indeed, Aureon cannot be a rate-of-return LEC because Section 51.903(g) requires a

[84] *See, e.g., Page v. United States,* 729 F.2d 818, 820 (D.C. Cir. 1984).

[85] *See, e.g., Cromwell*, 94 U.S. at 352; *People Who Care v. Rockford Bd. of Educ.*, 68 F.3d 172, 177 (7th Cir. 1995); *In re International Nutronics, Inc.*, 28 F.3d 965, 969 (9th Cir. 1994), *cert. denied*, 513 U.S. 1016 (1994); *Citibank, N.A. v. Data Lease Fin. Corp.*, 904 F.2d 1498, 1501 (11th Cir. 1990).

[86] *Application of Iowa Network Access Division for Authority Pursuant to Section 214 of the Communications Act of 1934 and Section 63.01 of the Commission's rules and Regulations to Lease Transmission Facilities to Provide Access Service to Interexchange Carriers in the State of Iowa,* Memorandum Opinion, Order and Certificate, 3 FCC Rcd. 1468 (1988) ("*FCC 214 Order*"), *aff'd on recon.*, 4 FCC Rcd. 2201 (1989) ("*FCC 214 Recon. Order*").

rate-of-return carrier to be an incumbent local exchange carrier ("ILEC").[87] Aureon is not an ILEC as defined by 47 U.S.C. § 251(h) because Aureon has never been a member of the National Exchange Carrier Association ("NECA"), and CEA service does not provide telephone exchange service.[88] Moreover, because the FCC classified Aureon as a dominant carrier, by definition, Aureon cannot be a competitive local exchange carrier ("CLEC").

A critical aspect of the Commission's Section 214 authorization is a mandatory terminating use requirement for CEA service, which ensures that the tariff rate for CEA service remains affordable for AT&T's smaller competitors. The Commission made its Section 214 authorization conditional upon the adoption by the Iowa Utilities Board ("IUB") of a similar mandatory terminating use requirement for intrastate traffic.[89] The Commission's original Section 214 authorization classified Aureon as a "dominant carrier providing exchange access service subject to Title II regulations,"[90] and the FCC recently reaffirmed Aureon's dominant carrier classification.[91] In imposing the mandatory terminating use requirement on IXCs, the Commission directed Aureon to file its interstate tariff with cost support and comply with other tariff requirements to ensure that its rate structure was reasonable.[92]

Moreover, in the FCC's *Transport Rate Structure Order*, the FCC considered whether small rural LECs connected to a CEA network should be required to offer direct connections to

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[87] 47 C.F.R. § 51.903(g).

[88] F. Hilton Decl. ¶ 16.

[89] *FCC 214 Order*, 3 FCC Rcd. at 1474, ¶ 39.

[90] *Id.* at 1469, ¶ 10.

[91] *Technology Transitions*, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd. 8283, 8290 n.43 (2016).

[92] *FCC 214 Order*, 3 FCC Rcd. at 1473-74, ¶¶ 35-37.

IXCs.[93] In that proceeding, Aureon asserted that small rural LECs connected to a CEA network should not be required to offer direct connections.[94] AT&T argued that "IXCs should have the option of ordering either direct-trunked [i.e., direct connections] or tandem-switched transport [i.e., CEA service]. AT&T assert[ed] that this approach would give all LECs an incentive for efficiency . . . ."[95] The FCC rejected AT&T's argument, and stated that "the Commission has previously approved centralized equal access arrangements with mandatory termination requirements, . . . and we do not require centralized equal access providers or LECs participating in such arrangements to offer direct-trunked transport service.[96]

In the instant proceeding, AT&T challenges Aureon's dominant carrier status, arguing that Aureon is either a non-dominant rate-of-return ILEC or a CLEC. AT&T also seeks to overturn the requirement that IXCs route all terminating traffic destined for the subtending LECs' exchanges over Aureon's CEA network. Aureon provides CEA service in the same manner that it did in 1988 when the FCC granted Section 214 authority to Aureon.[97] Furthermore, Aureon's classification as a dominant carrier (and not a rate-of-return ILEC or a CLEC) providing Title II exchange access service has not been changed by the FCC. The same set of operative facts set forth in the FCC's 1998 *FCC Section 214 Order* are at issue today, i.e., the provision of CEA service by Aureon to IXCs such as AT&T. The FCC's decisions regarding the CEA mandatory terminating use requirement and regulatory regime applicable to Aureon's CEA service remain binding on Aureon and AT&T today. Accordingly the first res judicata element is satisfied.

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[93] *Transport Rate Structure and Pricing*, Report and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd. 7006 (1992) ("*Transport Rate Structure Order*").

[94] *Id.* at 7048, ¶ 86.

[95] *Id*. at 7048-49, ¶ 89.

[96] *Id*. at 7049, ¶ 91.

[97] F. Hilton Decl. ¶ 16.

The second element for res judicata is also met because there was a final judgment on the merits in both the FCC and IUB proceedings. In the *FCC 214 Order*, the Commission granted Aureon authority to provide CEA service, and imposed a mandatory terminating use requirement on all IXC for traffic to LECs connected to the CEA network, which the FCC subsequently affirmed on reconsideration.[98] Similarly, the IUB also ordered AT&T, as the largest IXC, to route its intrastate terminating traffic over the CEA network to LECs subtending the CEA network in order to maintain an affordable CEA rate for AT&T's smaller competitors.[99] The IUB's decision was appealed to and affirmed by the Supreme Court of Iowa.[100] Furthermore, the FCC's *Transport Rate Structure Order* is a final order of the Commission. Thus, the decisions of the FCC and the IUB authorizing Aureon to provide CEA service as a dominant carrier, mandating that IXCs route traffic over the CEA network, and determining that CEA providers and their participating LECs are not required to offer direct connections to IXCs, are final.

The last element of res judicata – whether the cases involve the same parties or their privies – is also met. AT&T's affiliates, who are parties in privity with AT&T, were active participants in the FCC and IUB proceedings that classified Aureon as a dominant carrier providing exchange access service, and that required AT&T and other IXCs to terminate calls over the CEA network. Aureon and AT&T were also participants in the Commission's *Transport Rate Structure Order* proceeding. The same parties are involved in this case as well. Accordingly, AT&T is barred by res judicata from asserting claims that are contrary to the FCC and IUB's decisions holding that: (1) Aureon is a dominant carrier providing exchange access service under Title II; (2) all IXCs are

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[98] *See generally FCC 214 Recon. Order*, 4 FCC Rcd. 2201.

[99] *See* Ex. 28, *Iowa Network Access Division*, Final Decision and Order, Docket No. RPU-88-2, 1988 Iowa PUC Lexis 1, slip op. at 13 (IUB Oct. 18, 1988).

[100] *See generally Nw. Bell Tel. Co. v. Iowa Utils. Bd.*, 477 N.W.2d 678 (Iowa 1991).

required to route traffic over the CEA network to LECs connected to Aureon's network; and (3) LECs participating in CEA arrangements are not required to offer direct connections to AT&T or other IXCs.

Similarly, collateral estoppel also bars issues raised by AT&T challenging the Commission's prior findings that: (1) Aureon is not a rate-of-return ILEC or a CLEC; (2) AT&T is required to route traffic over Aureon's CEA network for traffic to LECs connected to the CEA network; and (3) AT&T must pay the CEA tariff rates calculated on the basis of cost support required by Section 61.38 of the Commission's rules. For collateral estoppel to be applied four elements must be present: (1) an issue identical to one that was previously litigated and that was essential to the previous decision; (2) the prior adjudication must have reached the stage of being a final judgment on the merits; (3) the party to be estopped must have been a party to the prior litigation, or in privity with such a party; and (4) the estopped party must have had a full and fair opportunity to litigate the issue in the prior proceeding.[101]

All of the collateral estoppel elements are met for the reasons discussed above regarding res judicata. The FCC has already decided in the *FCC 214 Order* that Aureon is a dominant carrier providing exchange access service regulated under Title II, and that AT&T is required to route calls over Aureon's CEA network to subtending LECs pursuant to the FCC's mandatory terminating use requirement. Moreover, the Commission directed Aureon to file its tariff rates and cost support information pursuant to Section 61.38 to ensure that Aureon charged a reasonable

[101] *Applications of Montgomery Cty. Media Network d/b/a Imagists Carmen Matias & Andrew N. Wimbish, Jointly Wood Broad. Co. G-A Commc'ns, Inc. for Constr. Permit Conroe, Texas,* Memorandum Opinion and Order, 4 FCC Rcd. 3749, 3750, ¶ 4 (1989) (citing first *Yates v. United States*, 354 U.S. 298 (1957); then citing *Oldham v. Pritchett*, 599 F.2d 274 (8th Cir. 1979); then citing *Parklane Hosiery Co., Inc.*, 439 U.S. at 326 n. 5; and then citing *RKO General, Inc.*, Memorandum Opinion and Order, 82 F.C.C.2d 291, 313 (1980) (other citations omitted)).

rate to AT&T and other IXCs. AT&T fully participated in the proceedings before the FCC and the IUB regarding Aureon's CEA service, regulatory status, and tariff, and the orders issued by the FCC and IUB were appealed, affirmed, and final. Thus, any issues raised by AT&T now that seek to overturn the FCC's determinations in the *FCC 214 Order* and subsequent FCC tariff proceedings are conclusively barred by the doctrine of collateral estoppel.

D. Government Authority and Due Process.

AT&T's claims that Aureon's CEA rates are unlawful because they exceed the rate caps in the FCC's *USF/ICC Transformation Order* should be dismissed because that Commission order does not apply to dominant carriers such as Aureon. Even if, *arguendo,* the *USF/ICC Transformation Order* rate caps did apply to Aureon, due process required Aureon to be able to identify, with ascertainable certainty, the standards with which the FCC expected Aureon to conform. Because the *USF/ICC Transformation Order*, on its face, did not state that the rate caps applied to dominant CEA providers like Aureon who are neither rate-of-return ILECs nor CLECs, Aureon could not determine with ascertainable certainty that it was required to comply with rate caps in the *USF/ICC Transformation Order*.

As discussed above, the FCC classified Aureon as a dominant carrier.[102] As required by the *FCC 214 Order*, Aureon has, since its inception, calculated its CEA tariff rate on the basis of traffic and cost studies (rather than rate caps) in accordance with the procedures for dominant carriers set forth in Section 61.38 of the Commission's rules.[103] Aureon has also filed its CEA tariff pursuant to the procedures the Commission established for filing "deemed lawful" tariffs under Section 204(a)(3) of the Act.[104] For approximately thirty years, Aureon has calculated its

[102] *FCC 214 Order*, 3 FCC Rcd. at 1469, ¶ 10.

[103] 47 C.F.R. § 61.38; *see also* F. Hilton Decl. ¶ 19.

[104] 47 U.S.C. § 204(a)(3); *see also* F. Hilton Decl. ¶¶ 17, 19.

CEA rate and filed its CEA tariff consistent with the *FCC 214 Order*, Section 61.38 of the Commission's rules, and Section 204(a)(3) of the Act, and the Commission has never indicated that Aureon is not a dominant carrier.[105]

Due process requires that parties receive fair notice from a regulatory agency before being deprived of any property.[106] If the FCC grants AT&T's claims that Aureon's CEA rate is subject to the *USF/ICC Transformation Order* rate caps, the FCC would be depriving Aureon of its right to receive compensation under its filed tariff. The FCC cannot take such action if it did not provide Aureon with the necessary notice that Aureon would be subject to the *USF/ICC Transformation Order* rate caps. The relevant inquiry is whether "by reviewing the regulations and other public statements issued by the agency, a regulated party acting in good faith would be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform . . . ."[107]

The *USF/ICC Transformation Order* did not change any of the rules or procedures applicable to Aureon regarding its CEA rate or tariff. Throughout that order, the FCC referred to the adopted rules being applicable to ILECs or CLECs. There is not a single mention of either CEA service or CEA providers in the *USF/ICC Transformation Order*. The order adopted Section 51.909, which implemented access charge transition rates for ILECs. However, Aureon is not a rate-of-return ILEC subject to the rate regulations in Section 51.909. That rule only applies to "Rate-of-Return Carriers" as defined in Section 51.903(g),[108] which states that Rate-of-Return

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[105] F. Hilton Decl. ¶¶ 17, 19.

[106] *Trinity Broad. of Fla., Inc. v. FCC*, 211 F.3d 618, 628 (D.C. Cir. 2000) (citing *Gen. Elec. Co. v. EPA*, 53 F.3d 1324, 1328-29 (D.C. Cir. 1995)).

[107] *Id.*

[108] 47 C.F.R. § 51.903(g).

Carriers are ILECs. Aureon is not an ILEC as defined by 47 U.S.C. § 251(h), which defines an ILEC as a carrier that provides local service and is a NECA member. Aureon is not a "Rate-of-Return Carrier" within the narrow scope of the Section 51.909 rate regulations because it does not satisfy either prong of the definition of an ILEC. Furthermore, the rate regulations for CLECs set forth in Section 51.911[109] are inapplicable to Aureon because it is not a CLEC. The *FCC 214 Order* imposed dominant carrier status on Aureon, and regulating Aureon as a non-dominant CLEC would directly conflict with the *FCC 214 Order*. Since Aureon's inception, the FCC has always regulated Aureon's tariff rates as those of a dominant carrier filed under Section 61.38.

There is no indication from a straightforward reading of the *USF/ICC Transformation Order* and the rules adopted therein that the access charge transitional rate caps could apply to Aureon because it is neither a rate-of-return ILEC nor a CLEC, and Aureon has always calculated and filed its CEA rates consistent with the authorization granted under its Section 214 certificate. Aureon could not have known with any "ascertainable certainty" that the *USF/ICC Transformation Order* rate caps may be applied to CEA providers because the definitions of "Rate-of-Return Carrier" and "Competitive LEC" in the order, and the rules adopted by the order, excluded dominant CEA providers. Accordingly, AT&T's claims should be dismissed.

E. Conduct Contrary to Public Policy.

AT&T's complaint should also be denied because AT&T has engaged in unlawful conduct that is contrary to public policy. In this case, AT&T has engaged in improper conduct to put Aureon out of business and reduce competition from small IXCs that rely on an affordable CEA network to reach rural exchanges. Specifically, AT&T has violated the CEA mandatory

[109] *Id.* at § 51.911.

termination use policy, and withheld payment from Aureon in order to stifle competition in rural areas.

Documents produced by AT&T during the pre-complaint informal exchange of documents revealed that **[BEGIN CONFIDENTIAL]** [redacted] [redacted][110] **[END CONFIDENTIAL]** Those subtending LECs have agreed to route all interexchange traffic, including AT&T's traffic, over the CEA network, and those subtending LECs are listed as Routing Exchange Carriers in Aureon's tariff for purposes of CEA service.[111] Furthermore, in adopting Section 69.112(i), and in response to AT&T's argument as a party to that rulemaking proceeding contending that direct trunked transport should be provided in lieu of CEA service, the Commission held that "we do not require centralized equal access providers or LECs participating in such arrangements to offer direct-trunked transport service."[112]

The Commission required AT&T, as the nation's largest IXC, to route over Aureon's CEA network all traffic terminating to the end offices of subtending LECs in order to maintain an affordable CEA tariff rate for AT&T's smaller IXC competitors, and thereby increase the choice of long distance services available in rural Iowa. The Commission found that Aureon's CEA network would not be economically viable if it carried only the traffic of new market entrants and

[110] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[111] F. Hilton Decl. ¶ 6.

[112] *Transport Rate Structure Order*, 7 FCC Rcd. at 7048-49, ¶¶ 89, 91.

required AT&T to route its terminating traffic over the CEA network to the subtending LECs' end offices:

> All toll traffic, both inter- and intra-state, is to transit the Des Moines switch for ticketing and billing . . . In reaching its decision, the Bureau determined that INAD's [Iowa Network Access Division's] inclusion of a mandatory terminating use requirement for interstate traffic was not "unreasonable [nor would differ] substantially from the normal way access is provided, as both an originating and terminating service."[113]

In affirming the mandatory terminating use policy on appeal, the Court held that "unless INS provided terminating access as well as originating access, all the costs of operating the network would have to be recovered in the provision of originating access only."[114] The Court reasoned that "[s]uch a result would frustrate one of the main goals of the [Aureon] system since the higher costs, which would be passed along to the interexchange utilities, would deter the entry of competition".[115] AT&T's claims seek to unlawfully undermine rural competition by either not routing traffic over the CEA network in violation of the Commission's terminating use policy, or refusing to pay the CEA tariff rates for AT&T's traffic.

The steps AT&T is taking to transport the traffic of AT&T's customers to the subtending LECs' end offices without routing such traffic to Aureon's network is also relevant to the Commission's consideration of the reasonableness of the CEA tariff rate. Because Aureon's CEA rate under Section 61.38 is inversely related to the amount of traffic carried – i.e., as traffic volumes decrease, the CEA rate increases, and vice versa – a violation of the mandatory terminating use policy by AT&T either now or in the future would cause a significant increase in Aureon's CEA

[113] *FCC 214 Recon. Order*, 4 FCC Rcd. at 2201, ¶¶ 2, 3.

[114] *Nw. Bell Tel. Co.*, 477 N.W.2d at 684.

[115] *Id.*

tariff rate. The rate impact would be seriously exacerbated to the extent that AT&T's wholesale terminating service removes the traffic of other large IXCs from the CEA network.

F. Claimant's Own Conduct and Failure to Mitigate Damages.

AT&T has failed to mitigate its alleged damages. When AT&T routed the traffic of other IXCs to Aureon's network, AT&T could have mitigated its damages by: (1) carrying less traffic for other IXCs; (2) increasing the price that AT&T charged for routing traffic to Aureon's network; or (3) by enforcing the terms of AT&T's service, which prohibits the use of AT&T's services for calling free conferencing services. Because AT&T itself was in complete control of the amount of traffic it carried for other carriers routed to Aureon's network, AT&T inflicted on itself the alleged damages related to such traffic.

AT&T already knew the identity of the LECs that were engaged in high volume traffic activities.[116] Rather than requiring IXCs with access stimulating traffic to send calls directly to Aureon for routing to those LECs, AT&T continued to act as an indirect, intermediate carrier, and routed the traffic of other IXCs to Aureon's network. Similarly, AT&T could have increased the prices it charged to other IXCs for calls routed to Aureon's network in order to recoup the CEA tariff rate that AT&T was required to pay Aureon. That increase would have ensured that AT&T was providing service to the IXCs without a net loss, to the extent that there was any actual net loss to AT&T. AT&T caused its alleged damages because it entered into contracts with other IXCs to route traffic to access stimulating LECs.[117] The amount of access stimulating traffic passing through AT&T's network was greatly inflated due to AT&T's own conduct.

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[116] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[117] *See* Ex. 61, *N. Valley Commc'ns, LLC v. AT&T Corp.*, No. 1:14-CV-01018-RAL, slip op. at 15-17 (D. S.D. Aug. 20, 2015) (order granting motion to compel AT&T to disclose wholesale revenues).

Finally, AT&T could have enforced the provisions in its service agreements to curtail or terminate service to IXCs and end-user customers that sent traffic to access stimulating LECs because those calls violate AT&T's terms of service. For example, Section GP-10 of the General Provision of AT&T's Business Service Guide[118] specifically prohibits the use of AT&T's services "to generate calls with the intent or effect of creating a disparity (across any Customer account) between the costs to AT&T of originating and/or terminating access and the pricing of long distance service provided by AT&T."[119] Furthermore, AT&T's General Terms and Conditions regarding Fraud, Abuse, and Misuse of Services provide that AT&T "may immediately suspend, restrict or terminate Service" for, among other things, placing calls:

> [T]o or from any other service or number where the party or parties causing the artificial stimulation (or an entity or entities with a common financial interest with the party stimulating the traffic) derive revenues or other financial benefit from, or are compensated based upon said calling or other usage volumes in a capacity other than as a communications carrier as a result of the charges imposed on AT&T in connection with the call.[120]

Because AT&T failed to mitigate its damages, it cannot recover such alleged damages from Aureon.

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[118] Ex. 3, AT&T's Business Service Guide General Provisions, GP-10 – Fraud, Abuse and Misuse, at 35-39, *available at* http://serviceguidenew.att.com/sg_CustomPreviewer?attachmentId=00P1A00000ykkWHUAY (last viewed May 10, 2017)).

[119] *Id.* at 37.

[120] *See* Ex. 2, AT&T Business Service Guide, General Terms and Conditions, – Fraud, Abuse, and Misuse of Services, at 2, *available at* http://serviceguide.att.com/ABS/ext/Documents.cfm?DID=3093 (last viewed May 10, 2017).

III. INFORMATION DESIGNATION

Pursuant to 47 C.F.R. § 1.724(f), Aureon provides the following information designation:

A. Persons with Knowledge

Aureon believes that the following are persons with first-hand knowledge of the facts alleged with particularity in this Answer:

1. Name: Frank Hilton
   Address: Iowa Network Services, Inc.
   7760 Office Plaza Drive South
   West Des Moines, IA 50266
   Position: Vice President, Business Consulting
   Subjects: Invoices that Aureon sent AT&T for the Aureon services and facilities used by AT&T; Aureon's information technology and databases; Aureon's billing system and billing software; the calculation of late payment penalties; network layout, traffic routing and engineering; the local exchange routing guide ("LERG"); traffic studies and measurement of minutes-of-use; communications with AT&T; the circumstances surrounding AT&T's failure to pay Aureon's invoices for services rendered; Aureon's agreements with local exchange carriers subtending Aureon's access tandems; AT&T's billing disputes with local exchange carriers subtending Aureon's access tandems; Aureon's tariffs; regulatory issues; calculation of Aureon's damages.

2. Name: Patrick Vaughan
   Address: Iowa Network Services, Inc.
   7760 Office Plaza Drive South
   West Des Moines, IA 50266
   Position: Engineering Manager
   Subjects: Network layout, traffic routing and engineering; traffic studies and measurement of minutes-of-use; communications with AT&T; the local exchange routing guide ("LERG"): access service requests ("ASRs"); the services that AT&T ordered from Aureon; AT&T's acceptance of the services and facilities offered by Aureon to AT&T; the services that Aureon provided to AT&T; the Aureon facilities used by AT&T; Aureon's expectation that Aureon would receive payment from AT&T when AT&T's customers placed telephone calls that used Aureon's services and facilities.

3. Name: Dennis M. Creveling
   Address: Iowa Network Services, Inc.
   7760 Office Plaza Drive South
   West Des Moines, IA 50266

Position: Consultant
Subjects: Aureon's agreements with local exchange carriers subtending Aureon's access tandems; communications with AT&T; ASRs; the services that AT&T ordered from Aureon; AT&T's acceptance of the services and facilities offered by Aureon to AT&T; the services that Aureon provided to AT&T; the Aureon facilities used by AT&T; the rates and terms contained in Aureon's tariffs; Aureon's financials, cost studies and audits; the development of Aureon's rates; Aureon's expectation that Aureon would receive payment from AT&T when AT&T's customers placed telephone calls that used Aureon's services and facilities; the jurisdiction of calls using Aureon's services; traffic studies; invoices that Aureon sent AT&T for the Aureon services and facilities used by AT&T; the circumstances surrounding AT&T's failure to pay Aureon's invoices for services rendered; the calculation of late payment penalties; regulatory issues; calculation of Aureon's damages.

4. Name: Bill Warriner
Address: Moss Adams LLP
7285 West 132nd Street, Suite 220
Overland Park, KS 66213
Position: Consultant
Subjects: Development of cost support for Aureon's tariff; development of traffic factors for allocation of costs; development of Part 64 study showing allocation of costs; allocation of Aureon investments, reserves, revenues, and expenses among divisions; development of Part 36 study assigning or apportioning investments, reserves, revenues and expenses to the interstate jurisdiction; use of capital and financial budget data inputs provided by Aureon to produce cost support information for each period that is used for inputs to the Parts 36 and 64 cost studies for each period.

B. Description of Documents

A description of the documents relevant to the facts alleged by Aureon are not required to be submitted in this Answer pursuant to a waiver granted to the parties by the Enforcement Bureau on May 18, 2017.

C. Description of Information Search

Aureon's attorneys (James Troup, Tony Lee, Karyn Albin, and Keenan Adamchak) reviewed the record in this proceeding for relevant documents and factual information, and

coordinated with the persons listed above to locate any additional relevant information. The individuals and documents identified in Section III.A and III.B were selected based on a determination that they were relevant to the facts alleged with particularity in this Answer. The members of the team gathered documents, data compilations, tangible things, and information about individuals that might have relevant knowledge from both internal and publicly available sources. An analysis was then performed to determine whether the individuals identified had knowledge of relevant information or whether the documents, data compilations, and tangible things that had been gathered were relevant.

IV. CERTIFICATION OF SETTLEMENT EFFORTS

Pursuant to 47 C.F.R. 1.724(h), Aureon submits this certification of settlement efforts. Despite communications between the employees of the respective parties, AT&T has made no good faith effort to discuss the possibility of settlement. Aureon has offered to participate in mediation before the FCC. However, AT&T has not agreed to participate in any such discussions.

V. PROPOSED FINDINGS OF FACT

Pursuant to 47 C.F.R. § 1.724(c), Aureon submits the following proposed findings of fact.

A. Centralized Equal Access

1. Aureon is a CEA service provider incorporated in the State of Iowa, and has its principal place of business in West Des Moines, Iowa.[121]

2. Aureon provides CEA service to: Illinois, Minnesota, Iowa, Missouri, Nebraska, and South Dakota.[122]

[121] F. Hilton Decl. ¶ 3.

[122] *Id.*

3. AT&T Corp. is a New York corporation with its principal place of business in Bedminster, New Jersey. AT&T Corp. provides interstate long distance telephone service to customers located in several states, including customers located in: New Jersey, Illinois, Minnesota, Iowa, Missouri, Nebraska, and South Dakota.[123]

4. CEA service is one of the telecommunications services provided by Aureon. CEA service is provided to other telecommunications carriers. CEA service is not provided to individual consumers or end users.[124]

5. CEA service provides AT&T with the use of Aureon's 2,700 mile fiber optic cable network and access tandem switches to complete AT&T's long distance telephone calls. CEA service acts as a bridge between the networks of long distance telephone companies, like AT&T, and the local exchange networks of more than 200 LECs.[125]

6. The FCC granted an authorization to Aureon to provide CEA service in *Application of Iowa Network Access Division for Authority Pursuant to Section 214 of the Communications Act of 1934 and Section 63.01 of the Commission's Rules and Regulations to Lease Transmission Facilities to Provide Access Service to Interexchange Carriers in the State of Iowa*, Memorandum Opinion, Order and Certificate, 3 FCC Rcd. 1468, 1471, ¶¶ 21, 23 (1988) ("*FCC 214 Order*"), *aff'd on recon.*, 4 FCC Rcd. 2201 (1989).

7. The Iowa Utilities Board also granted authorization to Aureon to provide CEA service, in *Iowa Network Access Division, Division of Iowa Network Services*, Docket No. RPU-

[123] *Id.* ¶ 4.

[124] *Id.*

[125] *Id.* ¶¶ 3, 10.

88-2, 1988 Iowa PUC LEXIS 1 (IUB Oct. 18, 1988) ("*State Authorization*") (Ex. 28), *aff'd on appeal, Nw. Bell Tel. Co. v. Iowa Utils. Bd.*, 477 N.W.2d 678, 681 (Iowa 1991).

8. The *FCC 214 Order* and *State Authorization* continue to govern Aureon's operations today.

9. The *FCC 214 Order* and *State Authorization* require IXCs, like AT&T, to deliver their calls to the Aureon CEA network, when the calls are destined for a LEC that has chosen to connect its facilities to the CEA network. *FCC 214 Order*, 3 FCC Rcd. at 1473, ¶ 33 (holding that "We do not believe that the mandatory termination requirement for interstate traffic is unreasonable or differs substantially from the normal way access is provided"); *State Authorization* (Ex. 28), slip op. at 12 ("The participating telephone companies will be allowed to route their traffic pursuant to their participation agreement with Aureon").

10. AT&T does not operate local exchange facilities in the states where Aureon offers CEA service, and AT&T's long distance network does not extend to the LECs' networks connected to Aureon's CEA service.[126]

11. Aureon operates wires and facilities that span the distance between AT&T's long distance network and the LECs' networks connected to Aureon's CEA service.[127]

12. Beginning with Aureon's September, 2013 invoice (for CEA service provided in August, 2013), AT&T has withheld payment of some amounts billed by Aureon for CEA service.[128]

[126] F. Hilton Decl. ¶ 5.

[127] *Id.* ¶ 6.

[128] *Id.* ¶ 14.

13. During the period of time for which AT&T has been withholding payment, Aureon has provided CEA service to AT&T.[129]

14. AT&T has used the CEA service provided by Aureon to complete the telephone calls of AT&T's customers.[130]

15. Since August 1, 2013, AT&T has routed calls over Aureon's facilities.[131]

B. Calls Delivered from LECs to AT&T

16. CEA service involves AT&T's use of Aureon's facilities between a LEC's network and AT&T's long distance network to enable an AT&T customer located in the LEC's service area to place a long distance call.[132]

17. During the period of time for which AT&T has been withholding payment, Aureon carried calls placed by some of AT&T's customers that were routed to AT&T's long distance network.[133]

18. Since August 1, 2013, Aureon provided switching and transport for certain calls placed by AT&T's customers that were routed to AT&T's long distance network.[134]

C. Calls Delivered From AT&T to LECs.

19. CEA service also involves AT&T's use of Aureon's facilities between AT&T's long distance network and a LEC's network to enable an AT&T customer to complete long

[129] *Id.*

[130] *Id.* ¶ 12.

[131] *Id.* ¶ 14.

[132] F. Hilton Decl. ¶ 3.

[133] *Id.* ¶ 14.

[134] *Id.*

distance calls to phones and other equipment located in the town where the LEC provides local telephone service.[135]

20. During the period of time for which AT&T has been withholding payment, Aureon received calls from AT&T's long distance network and carried those calls to the LECs' networks connected to Aureon's CEA service.[136]

21. Since August 1, 2013, Aureon provided switching and transport for certain calls received from AT&T's long distance network that were routed to LECs' networks connected to Aureon's CEA service.[137]

22. Since August 1, 2013, Aureon has provided CEA service to AT&T.[138]

D. Non-Payment of Aureon's Tariff Rates for CEA Service

23. The prices and other terms governing CEA service are contained in tariffs filed with the FCC and state regulatory agencies.[139]

24. The CEA network provides a "through route" between AT&T's long distance network and the networks of other carriers, such as LECs.[140]

25. Tariffs are filed at the FCC containing the prices that are charged to other carriers, such as AT&T, for transmitting calls over the CEA through route.[141]

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[135] *Id.* ¶ 3.

[136] *Id.* ¶ 14.

[137] F. Hilton Decl. ¶¶ 3, 14.

[138] *Id.* ¶ 14.

[139] *Id.* ¶¶ 7-8, 10.

[140] *Id.* ¶ 8.

[141] *Id.*

26. Aureon's CEA tariffs contain the prices for the through route that the CEA network provided (and continues to provide) to AT&T. [142]

27. Aureon is required to make a tariff filing at least every two years that includes a cost study and other data supporting the lawfulness of the CEA tariff prices. Cost and traffic data determine whether the CEA tariff prices should be increased or decreased. The data that Aureon must file with the FCC to support a CEA tariff price increase are described in Section 61.38 of the Commission's rules, 47 C.F.R. § 61.38.[143]

28. Section 61.38 applies to dominant carriers.[144]

29. Aureon is classified as a dominant carrier in its provision of CEA service.[145]

30. Section 69.3(f)(1) of the Commission's rules, 47 C.F.R. § 69.3(f)(1), requires tariff prices calculated pursuant to Section 61.38 to be filed at least every two years. However, this requirement does not preclude tariff price adjustments to be filed more frequently. 47 C.F.R. § 69.3(b).

31. When the FCC is concerned about the lawfulness of an increase in a tariff price, the FCC may suspend and investigate the tariff price increase. 47 U.S.C. § 204(a).

32. Aureon filed a revision to its tariff with the FCC on June 17, 2013, proposing a small increase in the price of CEA service from $0.00623 per minute to $0.00896 per minute. During the fifteen-day statutory period, the FCC did not initiate a Section 204(a)(1) hearing

[142] F. Hilton Decl. ¶ 8.

[143] *Id.* ¶¶ 13, 18-19.

[144] *Id.* ¶ 19.

[145] *Id.*

concerning the lawfulness of the CEA tariff price increase. Therefore, the new CEA tariff price became effective fifteen days after it was filed with the FCC.[146]

33. In compliance with Section 61.38 of the Commission's rules, Aureon also filed with the FCC on June 17, 2013, cost and usage data supporting the increase in the CEA tariff price.[147] That detailed cost support demonstrated that the CEA tariff price increase was reasonable in light of the increase in Aureon's transport costs, due to the additional mileage that Aureon is transmitting calls for long distance telephone companies (like AT&T), and the historical trend in declining traffic volumes.

34. AT&T has not filed at the FCC a petition to suspend Aureon's tariff.[148]

35. The current prices in the CEA tariffs have not been suspended or rejected by the FCC.[149]

36. Aureon does not provide CEA service to end users. CEA service does not provide local telephone service between end users located within the same local exchange area. Therefore, Aureon's CEA network does not provide local exchange service or local telephone service. Instead, Aureon serves as an intermediate carrier transmitting calls between AT&T's network and exchanges served by third party LECs. Furthermore, CEA service is provided and billed to carriers, such as AT&T (not end users).[150]

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[146] *Id.* ¶ 13.

[147] *Id.*

[148] F. Hilton Decl. ¶ 13.

[149] *Id.*

[150] *Id.* ¶¶ 4, 16.

37. Aureon is not a "Price Cap Carrier" because Aureon is not a LEC subject to price cap regulation pursuant to 47 C.F.R. §§ 61.41 through 61.49.[151] Therefore, the tariff price reductions for "Price Cap Carriers" described in 47 C.F.R. § 51.907 are inapplicable to CEA service.

38. Aureon is also not an ILEC or a CLEC. CEA service is not local telephone service and is provided only to carriers (and not end users).[152] Therefore, the tariff price reductions for ILECs and CLECs described in Sections 51.909 and 51.911 of the Commission's rules, 47 C.F.R. §§ 51.909, 51.911, are inapplicable to CEA service.

39. AT&T ordered CEA service from Aureon by sending access service requests ("ASRs") to Aureon.[153]

40. Aureon accepted those AT&T offers by sending firm order commitments ("FOCs") or confirmations to AT&T.[154]

41. Aureon rendered performance by providing the facilities and services that AT&T ordered in the ASRs.[155]

42. Aureon expected remuneration from AT&T at the time it performed the ordered service, and AT&T was on notice that Aureon's services were offered with the expectation of compensation at the CEA tariff prices.[156]

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[151] *Id.* ¶ 17.

[152] *Id.* ¶ 3.

[153] F. Hilton Decl.¶ 11.

[154] *Id.*

[155] *Id.*

[156] *Id.* ¶ 20.

43. Aureon's CEA service was beneficial to AT&T.[157] AT&T received money from AT&T's customers who placed calls that used Aureon's CEA service.

44. AT&T paid the prices in the CEA tariffs prior to the September, 2013 invoice.[158]

45. AT&T has paid the prices in the CEA tariffs for more than twenty years.[159]

46. AT&T fully paid Aureon's August, 2013 invoice and previous invoices for CEA service.[160]

47. The CEA tariffs were properly filed with the FCC and state regulators.[161]

48. The CEA tariffs are currently effective.[162]

49. Aureon has sent monthly invoices to AT&T for CEA service.[163]

50. The prices that Aureon billed AT&T for CEA service since September 1, 2013, are the same prices that are currently effective in the CEA tariffs.[164]

51. The dollar amounts billed by Aureon can be calculated by applying the prices in the CEA tariffs to AT&T's minutes-of-use for CEA service.[165]

52. AT&T has failed to fully pay Aureon's September 2013 invoice and subsequent invoices for CEA service.[166]

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[157] *Id.* ¶ 5.

[158] *Id.* ¶ 14.

[159] F. Hilton Decl. ¶ 14.

[160] *Id.*

[161] *Id.* ¶ 6.

[162] F. Hilton Decl. ¶ 6.

[163] *Id.* ¶ 14.

[164] *Id.* ¶ 20.

[165] *Id.*

[166] *Id.* ¶ 14.

53. AT&T continues to take CEA service from Aureon.[167]

54. Since August 1, 2013, AT&T has received payments from AT&T's customers who placed calls that were carried, in part, by Aureon's CEA network.

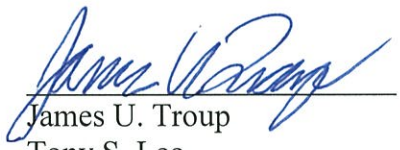
55. AT&T has not notified Aureon that it wants Aureon to disconnect AT&T from the Aureon CEA network.[168]

56. AT&T has breached the CEA tariffs by failing to fully pay the CEA tariff rates for the CEA service that AT&T ordered and that Aureon provided to AT&T.

VI. CONCLUSION

WHEREFORE, for the foregoing reasons, Aureon requests that the Commission deny AT&T's Formal Complaint for the reasons set forth herein, and in Aureon's Legal Analysis.

Respectfully submitted,



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Counsel for Iowa Network Services, Inc. d/b/a/ Aureon Network Services

Dated: June 28, 2017

[167] F. Hilton Decl. ¶ 14.

[168] *Id.*

CERTIFICATE OF SERVICE

I, Monica Gibson-Moore, do hereby certify that on this 28th day of June, 2017, copies of the foregoing Answer of Iowa Network Services, Inc. d/b/a Aureon Network Services were sent to the following:

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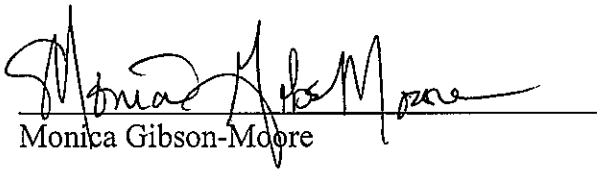

Monica Gibson-Moore

EXHIBIT A

DECLARATION OF JEFF SCHILL

THIRD PARTY, HIGHLY CONFIDENTIAL, AND CONFIDENTIAL MATERIALS OMITTED

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
AT&T CORP.,	)	
	)	Docket No. 17-56
Complainant	)	
	)	Bureau ID No. EB-07-MD-001
vs.	)	
	)	
IOWA NETWORK SERVICES, INC., d/b/a AUREON NETWORK SERVICES	)	
	)	
Respondent.	)	
	)	

DECLARATION OF JEFF SCHILL

I, JEFF SCHILL, hereby declare as follows:

1. I am the Senior Vice President of Corporate Finance for Iowa Network Services, Inc. d/b/a Aureon Network Services ("Aureon"), and have been in this role since July 2016. Prior to that I was the Vice President – Finance, a position I assumed upon the retirement of the Chief Financial Officer in July 2014. Prior to that time period I have held various financial roles during my eleven year tenure at Aureon and am a certified public accountant in the State of Iowa. I make this declaration voluntarily in support of Aureon's Answer to AT&T Corp.'s ("AT&T") Complaint. My responsibilities at Aureon include overseeing the financial aspects of Aureon's operations, collaborating with the Aureon billing department in the preparation and issuance of invoices to carriers that use Aureon's centralized equal access ("CEA") service provided though Aureon's network, maintaining records regarding disputes from other carriers regarding bills issued by Aureon for CEA service, and coordinating the preparation and filing of Aureon's tariff

and tariff review plan ("TRP") with the Federal Communications Commission ("FCC," or the "Commission").

2. In order to perform my duties, I am required to have general knowledge of all aspects of Aureon's operations, and general knowledge of the operation of Aureon's network. The information provided herein is based on my personal knowledge, my review of documents and records kept by Aureon in the regular course of business, and my review of documents publically filed and available at the FCC.

3. I have reviewed the Declaration of Daniel P. Rhinehart submitted with AT&T's Complaint, and many of his conclusions are misleading or are incorrect because they are based on a misunderstanding – or lack of understanding – of Aureon's CEA operations, and on improper assumptions regarding the operation of the FCC's cost and accounting rules as applied to CEA providers.

4. As an initial matter, Mr. Rhinehart states that he is "very familiar with the manner in which rates are calculated by Local Exchange Carriers ("LECs") that are regulated on a rate of return basis."[1] As discussed in Aureon's Legal Analysis, Aureon is not an incumbent LEC ("ILEC"), as defined by 47 U.S.C. § 251(h) because Aureon has never been a member of the National Exchange Carrier Association ("NECA"), and CEA service does not involve the provision of telephone exchange service.[2] Furthermore, contrary to Mr. Rhinehart's assertion, Aureon is a dominant carrier, and not a "Rate-of-Return Carrier" as defined by Section 51.903(g) of the Commission's rules.[3] "Rate-of-Return Carrier" is defined in Section 51.903(g) of the

[1] Declaration of Daniel P. Rhinehart ("Rhinehart Decl.") ¶ 2.

[2] *See* Aureon Legal Analysis, Section IV, VI.

[3] 47 C.F.R. § 51.903(g).

Commission's rules as an ILEC.[4] Mr. Rhinehart's conclusions regarding Aureon's rates and cost studies are fundamentally flawed from the start because Aureon is not an ILEC, and it is not a "Rate-of-Return Carrier" pursuant to Section 51.903(g). It is important to note that Mr. Rhinehart's experience – as reflected in his CV (Exhibit 81) – with AT&T is well documented. Mr. Rhinehart has participated in more than 100 proceedings and negotiations during his career at AT&T. In general, his work experience is consistent with that of a professional witness. Mr. Rhinehart's expertise in this matter is questionable as Aureon is neither an ILEC nor a CLEC, and his expertise may not apply to Aureon and the specifics of this complaint.

5. Mr. Rhinehart further states that although Aureon's rates have declined since 1989, Aureon's rates are purportedly not consistent with "general industry trends for access charges."[5] Aureon is one of only four carriers authorized by the FCC to provide CEA service in the country. As such, CEA service is not one that is comparable to access service that is generally provided by other carriers, particularly when such a service may be provided in more populous areas. Furthermore, Aureon's CEA interstate rate is a non-distance sensitive rate that incorporates both switching and transport costs, and provides access to Aureon's more than 2,700 mile fiber network. By contrast, LECs that provide access service bill IXCs a switching and a distance-sensitive transport rate. CEA service was specifically designed to enable long distance competition in rural areas. Accordingly, it is erroneous for Mr. Rhinehart to make general statements and conclusions that compare Aureon's CEA service to access service throughout the telecommunications industry in general.

[4] *Id.*

[5] Rhinehart Decl. ¶ 3.

6. With respect to Mr. Rhinehart's observations regarding Aureon's rates,[6] those observations are flawed. Specifically:

Rhinehart First Observation: Mr. Rhinehart incorrectly concludes that the network cost allocations to the Access Division appear to be excessive because it does not own facilities or equipment used with CEA service but instead, leases facilities and equipment from Aureon's Interexchange Carrier Division ("IXC Division") at rates higher than that leased to other entities. The FCC's *Fifth Report and Order* in the Competitive Common Carrier Services proceeding prohibited Aureon's Access Division from jointly owning the transmission and switching facilities with Aureon's IXC Division.[7] As noted in the *FCC 214 Order*, Aureon fully disclosed to the Commission that the IXC Division would not charge the Access division the lowest rate charged to other customers.[8] Moreover, pursuant to AT&T's recommendation that the FCC impose a circuit usage reporting requirement on Aureon to prevent cross-subsidization,[9] Aureon has previously filed biannual reports as required by the Commission.

Rhinehart's Second Observation: Mr. Rhinehart states that an increased percentage of Cable and Wire Facility expense is being allocated to the Access Division. According to Mr. Rhinehart, this implies a shifting of costs from other divisions, thus inflating the revenue requirement. This is an incorrect statement as Mr. Rhinehart has failed to consider the actual

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[6] *Id.* ¶ 4.

[7] *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, Fifth Report and Order, 98 F.C.C.2d 1191 (1984) ("*Fifth Report and Order*").

[8] *Application of Iowa Network Access Division for Authority Pursuant to Section 214 of the Communications Act of 1934 and Section 63.01 of the Commission's Rules and Regulations to Lease Transmission Facilities to Provide Access Service to Interexchange Carriers in the State of Iowa*, Memorandum Opinion, Order and Certificate, 3 FCC Rcd. 1468, 1470, ¶ 12 (1988) ("*FCC 214 Order*"), *aff'd on recon.*, 4 FCC Rcd. 2201 (1989) ("*FCC 214 Recon. Order*").

[9] *FCC 214 Order*, 3 FCC Rcd. at 1472, ¶ 24.

allocated expense. No correlation can be drawn from Mr. Rhinehart's observations regarding the relationship of network lease costs to the total operating expenses of the Access Division. Network costs charged to the Access Division are merely a function of the investments and operating expenses of the IXC Division attributable to the network facilities used by the Access Division to provide CEA services to its carrier customers in Iowa.

Rhinehart's Third Observation: Mr. Rhinehart questions the reasonableness of Aureon's lease costs charged to the Access Division. Aureon's tariff filings and cost support are based on the best estimates and data available to the Aureon staff at the time of the filing. Certain assumptions and forecasts are required relating to traffic patterns, trends, and other factors. This assessment is performed using the fully distributed costs of the IXC Division (using a stated rate of return of 9.50%) apportioned among the services provided by the IXC Division. Since Aureon no longer provisions circuits below the DS-1 level, the charge per DS-0 circuit mile is determined based on the fully distributed cost per mile of a DS-1 circuit divided by the average non-spare capacity of twenty-two DS-0 channels per DS-1 circuit. Mr. Rhinehart utilizes flawed assumptions in his attempt to translate DS-0 circuit miles to DS-3 equivalent circuit miles, and therefore, his conclusions are wrong. Aureon's finance team's continuous goal is to maintain objectivity in reporting at all times while providing what is required by the FCC's rules – which is why Aureon utilizes an independent third-party consultant to perform Aureon's cost studies.

Rhinehart's Fourth Observation: Mr. Rhinehart states that the FCC assumed that the majority of the CEA network's costs would be recovered from intraLATA toll calls. However, the Commission did not condition its *FCC 214 Order* on whether the "majority" of the usage of the CEA network would be from intrastate traffic. Rather, the FCC was concerned that the largest intrastate interexchange ("IXC") carrier at the time, Northwestern Bell, would not be required to

send traffic over the CEA network because "[i]f the appropriate state agencies do not approve INAD's [the Access Division's] arrangement as proposed here, INAD's assumption that the majority of the network's costs will be recovered from intraLATA toll calls may prove incorrect and the costs assessed on interstate calls could increase substantially."[10] The condition for grant of Section 214 authority to Aureon in the *FCC 214 Order* was met when the Iowa Utilities Board ruled that Northwestern Bell was required to route intrastate interexchange traffic over the CEA network to the subtending LECs. Regardless of whether the majority of the usage was from intrastate or interstate calls, the jurisdiction of the traffic routed over the CEA network is not in Aureon's control.

Rhinehart's Fifth Observation: With regard to Aureon's five-year traffic forecasts, Mr. Rhinehart complains that the forecasts vary from year to year, and alleges that the forecasts are inaccurate. Forecasting traffic over a long time period is difficult, particularly when Aureon has no control over the traffic sent by other carriers over its network. Aureon's forecasts are actually more accurate than Mr. Rhinehart suggests. For the test periods examined by Mr. Rhinehart, all but two were within 10% of the traffic forecast, and three test periods were within 5-6% of traffic forecasts. Mr. Rhinehart further states that Aureon's recent forecasts show declining demand, while AT&T's traffic on the CEA network is increasing. Aureon's forecasts are based on total CEA traffic, and is not projected by individual carrier traffic. Mr. Rhinehart's suggestion that AT&T's share of total CEA traffic is increasing is likely the result of AT&T acting as the intermediate carrier for other IXCs.

Rhinehart's Sixth Observation: Mr. Rhinehart takes issue with Aureon's inclusion in its revenue requirement amounts that Aureon has billed but has not been able to collect from other

[10] *Id.* at 1473, ¶ 32.

carriers. Those amounts are properly included in Aureon's revenue requirement because Aureon provided CEA service to those carriers, and properly billed those carriers for CEA service. Nonetheless, those carriers refuse to pay for Aureon's service. Aureon is actively seeking to collect those amounts.

The Overall Level of Aureon's CEA Rates

7. In 1988, Aureon received approval from the FCC to provide CEA service in Iowa, and filed its original tariff for CEA service that same year.[11] Aureon's original CEA service rate was $0.0117 per minute.[12] As of 2017, Aureon's CEA service rate is $0.00896 per minute.[13] Mr. Rhinehart states that Aureon's CEA rate "has remained at roughly the same level."[14] However, between 1989 and 2017, the CEA rate declined approximately 23.4%, which Mr. Rhinehart acknowledges later in his declaration.[15]

8. Mr. Rhinehart alleges that the slow decline in Aureon's CEA rate since 1989 is "surprising given the overall trend in the industry with regard to access charges."[16] The fact that Aureon's CEA rate follows trends that are different than that for access charges in the general telecommunications industry is not surprising at all given that CEA service is a different type of access service than the more limited service provided by LECs. Unlike access service provided by LECs, which involves a separate switched access rate and a distance sensitive transport rate,

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[11] *See generally*, *FCC 214 Order*, 4 FCC Rcd. 2201 (1989); *see also*, *Iowa Network Access Division Tariff F.C.C. No. 1, Transmittal Nos. 1, 6, and 10*, Order, 4 FCC Rcd. 3947, 3947, ¶ 1 (1989) ("*FCC Tariff Order*").

[12] *FCC Tariff Order*, 4 FCC Rcd. at 3947, ¶ 9.

[13] Ex. 53, INAD Tariff F.C.C. No. 1, § 6.8.1, 12th Revised Page No. 145.

[14] Rhinehart Decl. ¶ 7.

[15] *Id.* ¶ 8.

[16] *Id.*

Aureon's interstate CEA service is provided pursuant to a single tariff rate that is referred to as the switched transport rate.[17] That single switched transport rate recovers the costs of both transport and tandem switching.[18] In order to make rural areas more attractive for small IXCs to serve, Aureon charges a non-distance sensitive switched transport rate that provides IXCs with access to the more than 2,700-mile CEA network.[19] Mr. Rhinehart's comparison of Aureon's CEA rate to access charges billed by the general telecommunications industry is flawed as CEA service provided by Aureon, and access service provided by LECs, are not the same type of access service.

9. Mr. Rhinehart alleges that Aureon's CEA rate is "particularly difficult to understand" based upon the assumption that the combination of reduced depreciation assigned to the Access Division and the increases in traffic volumes should have driven down rates. Traffic volumes have, in fact, fluctuated dramatically, and have had the effect of driving down rates during the peak years of the 2010 and 2012 studies. Subsequent years, with decreases in traffic, had the opposite effect. Depreciation expense, on the other hand, is not a major driver of the tariff calculations. In Aureon's 2006 tariff filing, Plant in Service (net after accumulated depreciation) allocated to the Access Division was $8.9 million, with related depreciation of $2.7 million included in the study. In the 2016 filing, the net Plant in Service was $3.7 million with related depreciation of $1.4 million. The reduced depreciation did indeed impact the tariff rate by reducing the revenue requirement, though not to the degree suggested by Mr. Rhinehart.

10. Despite Mr. Rhinehart's contentions, Aureon's CEA rates do reflect cost efficiency gains resulting from upgrades to its fiber network.[20] In its tariff filings, Aureon has reported

[17] Declaration of Frank Hilton, ¶ 10, attached to Aureon's Answer as Ex. B.

[18] *Id.*

[19] *Id.*

[20] *Id.* ¶ 10.

millions of dollars in infrastructure upgrades over the past several years.[21] However, any gains realized by network infrastructure upgrades made to Aureon's fiber network over the past several years have been offset by increases in access stimulation traffic volumes, and the need to augment facilities in order to handle that traffic. Because Aureon is not involved in access stimulation, it is difficult for Aureon to predict how much access stimulation traffic will be routed across its CEA network – which, in turn, affects its ability to project revenue requirements.[22] Moreover, the supported rate of $0.01332 in the 2016 tariff filing that Mr. Rhinehart describes as two tenths higher than the 1989 tariff rate is at that level due to the inclusion of $16.5 million of uncollectible expense in the study. Were it not for this uncollectible amount, for which AT&T is directly responsible, the calculated support rate would have decreased 26% from the rate in 2014, and 58% from the rate in 1989, and would be $0.00673 – a full half cent less than in 1989.

11. Finally, Mr. Rhinehart implies that because Aureon "dramatically lowered" the rates for "some of its non-CEA services" over the past fifteen years, it should have also similarly

[21] *See* Ex. 13, Aureon's 2013 Tariff Filing (filed June 17, 2013), Introduction, Overview and Rate Development at 2 ("As this network ages, INS has plans to upgrade its fiber routes and electronics to bring newer technologies and increased capacity in areas where needed. Approximately $20.3 million has been expended since 2010 and an additional $22.5 million is planned for 2013.").

[22] Mr. Rhinehart makes reference to the Copeland Declaration to support his argument that Aureon's CEA service rates do not reflect upgrades to its fiber network. *See* Rhinehart Decl. ¶ 10 (citing Ex. 67, Copeland Decl. ¶¶ 11-14). The Copeland Declaration was made in the context of the *Qwest Commc'ns Corp. v. Farmers & Merchants Mut. Tel. Co.* complaint proceeding, which concerned the access charges of an ILEC – rather than a CEA provider. *See Qwest Commc'ns Corp. v. Farmers & Merchants Mut. Tel. Co.*, File No. EB-07-MD-001. Costs associated with LEC access service are not comparable to CEA service costs. The CEA rate includes switching and transport charges in a single non-distance sensitive interstate rate. In contrast, end office switching and transport rates are charged separately for access service provided by ILECs and CLECs. Moreover, transport service provided by ILECs and CLECs is based on mileage. Therefore, the arguments relied upon by Mr. Rhinehart in the Copeland Declaration are inapplicable to determining the reasonableness of Aureon's CEA service rate.

reduced its CEA service rate.[23] Mr. Rhinehart points to the **[[BEGIN THIRD PARTY CONFIDENTIAL]]** [redacted] **[[END THIRD PARTY CONFIDENTIAL]]** Mr. Rhinehart also states that **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

12. Mr. Rhinehart's references here to the reductions in the **[[BEGIN THIRD PARTY CONFIDENTIAL]]** [redacted] **[[END THIRD PARTY CONFIDENTIAL]]** and the **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** do not have any bearing on whether Aureon's CEA service rates must be reduced. As discussed above, Aureon's interstate CEA rate is a single switched transport rate that provides access to more than 2,700 miles of fiber to reach all of the subtending LECs connected to the CEA network. By contrast, non-CEA services are tailored to specific customer needs, and only involve small amounts of transport and capacities. No conclusions can be drawn with regard to Aureon's CEA rates from the reduction in rates for non-CEA services.

13. Moreover, the Commission's **[[BEGIN THIRD PARTY CONFIDENTIAL]]** [redacted]

[23] Rhinehart Decl. ¶ 13.

[redacted] **[[END THIRD PARTY CONFIDENTIAL]]** The fact that Aureon lowered its rates for non-CEA services has no bearing on the reasonableness of the rates of its CEA service because the services are unrelated.

Aureon Appropriately Handled Network Investment Costs

14. Mr. Rhinehart alleges that Aureon's investments in its fiber network have not been accurately recorded in its books, and therefore, it is not apparent that the Access Division earns a rate of return on Aureon's infrastructure investments because these costs were recorded for other divisions.[25] Mr. Rhinehart further states that Aureon's Access Division appears to lease fiber capacity from Aureon's IXC Division that is not disclosed. Mr. Rhinehart does not seem to understand that the Access Division is required by the FCC to lease capacity from the IXC Division in order to comply with the Commission's rules, and that the FCC determined in the *FCC 214 Order* that capacity leases between the Aureon divisions satisfied the FCC's structural separations requirement.[26]

15. As required by the Commission's *Fifth Report and Order*, Aureon created separate corporate divisions which facilitated access services (i.e., the "Access Division"), and IXC services (i.e., the "IXC Division"). The *Fifth Report and Order* required a carrier's access division to "have separate books of account, and must not jointly own transmission or switching facilities"

[24] *See generally AT&T Corp. v. Alpine Commc'ns, LLC*, Memorandum Opinion and Order, 27 FCC Rcd. 11511 (2012).

[25] Rhinehart Decl. ¶ 14.

[26] *FCC 214 Order*, 3 FCC Rcd. at 1469, ¶ 10.

with its IXC Division.[27] The Commission mandated this corporate arrangement in order to "protect[] against cost-shifting and anticompetitive conduct . . . ."[28] Aureon's division of its access and interexchange services between the Access and IXC Divisions, respectively, was approved by the Commission at the time it granted Aureon's Section 214 authorization in 1989.[29]

16. As stated above, Aureon reported in several of its tariff filings that it has made significant investments in upgrading its fiber network. Furthermore, the cost support for Aureon's tariff filings show the transport costs incurred by the Access Division by leasing facilities from another Aureon division. As further detailed below, Mr. Rhinehart's assumptions in his analysis are fundamentally flawed, and as a result, his rate comparison analysis is completely erroneous. Account 6410 (Cable & Wire Facilities Expenses) includes the lease costs that Aureon's Access Division incurs for the amount of facilities it leases from the IXC Division. Lease costs are directly assigned to the division to which the lease rate is charged. All non-lease expenses in Account 6410 are assigned to undistributed costs and allocated on the basis of Cable and Wire Facilities ("CWF") investment in Account 2410. Since all CWF investment in Account 2410 is assigned to the IXC Division, all Account 6410 undistributed expenses are thereby assigned to the IXC Division. Network lease costs are periodically tested for reasonableness based on an analysis of costs derived from the IXC Division. Mr. Rhinehart also contends that Aureon's tariff filings do not provide information regarding the basis for the Access Division's lease costs for Cable & Wire Facilities in light of the fact that network costs constituted between 45.3% and 75.5% of the division's revenue requirement between 2004 and 2017.[30] The Commission's accounting rules do

[27] *Fifth Report and Order*, 98 F.C.C.2d at 1198-99, ¶ 9.

[28] *Id.*

[29] *FCC 214 Order*, 3 FCC Rcd. at 1469, ¶ 10.

[30] Rhinehart Decl. ¶ 15.

not require the tariff cost support to include lease rates.[31] Nevertheless, Aureon's tariff filings do disclose all the information necessary to calculate the lease rate paid to the IXC Division for fiber: the result of dividing the transport costs by the reported minutes of use.

17. Mr. Rhinehart further alleges that **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[END HIGHLY CONFIDENTIAL]]**

18. It is important to note that the DS-3 route mile rate stated by Mr. Rhinehart is an equivalent rate calculated by Mr. Rhinehart, and not a rate reported by the Access Division. Mr. Rhinehart's attempt to compare the DS-3 route miles rate charged by the IXC Division to the Access Division and other entities is based on false and highly misleading assumptions. Specifically, a DS-3 circuit has the capacity of 672 DS-0 channels. Mr. Rhinehart calculates an equivalent DS-3 rate per mile by multiplying the reported DS-0 rate per mile of **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** by the 672 DS-0 channels to arrive at an assumed monthly rate of **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted]

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[31] *See* 47 C.F.R. § 61.38 (contains no requirement to report costs between affiliates).

[32] Rhinehart Decl. ¶ 16 (citing **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

[33] Rhinehart Decl. ¶ 17 (citing **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

[[END HIGHLY CONFIDENTIAL]] per DS-3 route mile. To my knowledge, no carrier in the telecommunications industry has ever priced a DS-3 circuit by multiplying a DS-0 rate by the 672 DS-0 channels. This one assumption by Mr. Rhinehart is so significantly flawed that it renders the remainder of his analysis invalid. Furthermore, the CEA rate required to make a comprehensive more than 2,700 mile rural network of common trunks available to all IXCs on a non-discriminatory basis cannot be rationally compared to a single lease for transport between only two geographic points, or to the limited service provided for land-to-mobile traffic or the point-to-point transport provided by third parties without all the CEA functions.

19. As noted by the FCC in the *FCC 214 Order*, Aureon fully disclosed to the Commission that the IXC Division would not charge the Access Division the lowest rate paid by other users of the IXC Division's fiber network.[34] The FCC granted Aureon's Section 214 authorization knowing this, and did not impose a "lowest lease rate" condition like Indiana Switch offered to the FCC when the Commission approved Indiana Switch's Section 214 authorization for CEA.[35] Furthermore, the Access Division leases capacity of the entire IXC Division fiber network, whereas individual DS-3 circuit leases are discrete capacity arrangements that have a different cost structure than capacity leases between the Aureon divisions. Mr. Rhinehart's observations regarding the leases for discrete DS-3 circuits versus the Access Division's fiber leases are simply irrelevant with regard to the issues in this case.

[34] *FCC 214 Order*, 3 FCC Rcd. at 1469, ¶ 12.

[35] *See generally* Ex. 26, *Application of Indiana Switch Access Division*, Memorandum Opinion, Order and Certificate, File No. W-P-C-5671 (FCC Apr. 10, 1986).

Aureon's Allocation of Costs for Network Facilities was Appropriate, and its Lease Costs are Supported.

20. Mr. Rhinehart contends that Aureon over-allocated its infrastructure investment costs to the Access Division.[36] Aureon's cost allocations for the Access Division's use of Aureon's fiber network are compliant with the Commission's accounting rules. These cost allocations are based on the actual use of facilities provided to the Access Division at lease rates that are at or below the fully distributed cost of the network facilities provided. Any attempt to use generalized Access Division cost relationships from year to year to determine the reasonableness of one component of expense (e.g., charges for network costs) is improper, especially when the facilities being leased to the Access Division remain fairly constant from year to year. Any determination of the reasonableness of network costs allocated to affiliate divisions can only be performed based on an analysis of the cost and use of the facilities being provided. It is not apparent from Mr. Rhinehart's comments or observations that this analysis was performed, and therefore his observations and concerns about alleged over-allocation of costs for network facilities are completely without merit.

21. Aureon's calculation of lease costs allocated to the Access Division are proper. The Commission's accounting rules do not require tariff cost support to include the lease rate between divisions. The fact that Aureon used different cost accounting methodologies between the Access Division's network costs and its other costs, such as switching costs, is not problematic because cost factors can vary depending on the type of cost. Accordingly, any concerns about Aureon's allocation of network costs to the Access Division are unfounded.

[36] Rhinehart Decl. ¶¶ 18-27.

22. Mr. Rhinehart attempts to argue that the lease rate being charged by the IXC Division to the Access Division is excessive when compared to the rate for equivalent capacity charged to other parties. Mr. Rhinehart states that at a rate of **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** per DS-0 route mile, the equivalent charge is equal to **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** per DS-3 route mile, and then compares this equivalent rate to Aureon's DS-3 rate of **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** per DS-3 circuit charged to another party. Mr. Rhinehart arrives at this conclusion using the assumption that there are 672 DS-0 circuits (or channels) in a DS-3 circuit. Therefore, if you multiply 672 DS-0 channels by the DS-0 route mile rate of **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**, you arrive at an equivalent rate per DS-3 route mile of **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted]. **[[END HIGHLY CONFIDENTIAL]]** Mr. Rhinehart's assumption that the pricing of DS-0 circuits can be scaled to equivalent DS-3 route miles using a simple multiplier is fundamentally flawed.

23. All circuits (regardless of capacity level) are provisioned using a combination of transmission equipment (central office equipment, or "COE") and outside plant equipment (cable and wire facilities, or "CWF"). While the cost of transmission equipment is variable and sensitive to the bandwidth being provided, the price differential is not directly correlated with the change in bandwidth (number of channels) being provided. In other words, the cost of transmission equipment used to provision a DS-3 circuit is not 672 multiplied by the cost of transmission equipment used to provision a DS-0 circuit. In the case of Aureon, the cost of transmission equipment used to provision a DS-0 circuit is calculated in the amount of **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** after factoring the DS-1 cost

down to the DS-0 level. The cost of transmission equipment used to provision a DS-3 circuit is calculated in the amount of **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** or 66.6 times the equivalent cost of a DS-0 circuit – not 672 times the cost as assumed by Mr. Rhinehart in his flawed rate comparison.

24. Furthermore, under current industry guidelines, CWF investment costs cannot be allocated between services (DS-0, DS-1, or DS-3) on the basis of bandwidth (channels).[37] Carriers may opt to use the path, circuit, or system method to allocate CWF costs between services. Aureon uses the path method for the allocation of CWF costs between services. Under this method, each type of circuit is afforded the same weighting in the allocation of CWF costs between services. Therefore, the cost of CWF investment used to provision a DS-3 circuit to a customer premise would be the same as the cost of CWF investment used to provision a DS-0 or DS-1 circuit to the same customer premise.

25. Based on the aforementioned industry-recognized cost allocation methodologies, and after assessing the appropriate mix of COE and CWF costs included in the provisioning of DS-0, DS-1, and DS-3 circuits as well as the average miles of the respective provisioned circuits, we can reasonably assert that the cost differential between a DS-3 circuit and a DS-0 circuit calculated using the same circuit miles is a factor of 30.37 times – not 672 times as assumed by Mr. Rhinehart. Moreover, since Mr. Rhinehart did not specify the circuit mileage attributed to the IXC Division rate charged to other parties, there is no way to make a reasonable comparison between the rates charged by the IXC Division to the Access Division versus other parties since the rate charged the Access Division is mileage sensitive.

[37] Ex. 63, National Exchange Carriers Association Reporting Guidelines, NRG 4.19 (revised Feb. 2013).

26. It is important to note that the IXC Division's operating expenses and plant investments have remained relatively constant during the period under observation by Mr. Rhinehart, and network enhancements continue to be planned as new technologies become available. Additionally, the number of circuits leased to the Access Division have also remained relatively constant during the period under observation by Mr. Rhinehart. Table 1, attached to my declaration, provides an analysis of the network expenses, net telephone plant, and revenue requirements for the periods that were analyzed by Mr. Rhinehart. The data shows the consistency of network costs during these periods which make up the underlying basis supporting the lease costs for the Access Division. While Aureon has been forced to shoulder many costs of the Access Division (in light of the fact that two carriers who are receiving CEA services are refusing to pay for those services), it continues to invest in and maintain a reliable and robust network for the provision of CEA services to all carriers mandated by its regulatory charter to do business in Iowa. The data also shows that the DS-0 lease rate charged to the Access Division is justified based on the costs of the IXC Division.

27. Furthermore, Table D – Five Year Lease Cost Forecasts is not relevant to lease costs associated with the Access Division. The information presented represents the budgeted and forecasted total interproduct lease revenue and expense for all of Aureon's divisions and products. The product mix and associated parameters that determine the lease charges can change from year to year, and the resulting total company figure is irrelevant to this discussion. Accordingly, no conclusions can be made from such information. Lease costs associated with the Access Division are discussed above.

28. Only recently did Aureon learn **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted]

[redacted]

[redacted] **[[END HIGHLY CONFIDENTIAL]]** Accordingly, lease forecast concerns regarding cross-subsidization are grossly misplaced, and are unfounded.

29. Table E is also not relevant as a measure of expense activity for the Access Division. A closer look at Section 5 of the cost support for Aureon's tariff filings illustrates this. As required by the FCC's rules, no CWF investments are directly allocated to the Access Division. Mr. Rhinehart's table would suggest that costs have tripled based on Table E's CWF investment activity. As previously discussed, Aureon's revenue requirement has been declining (excluding uncollectibles) rather than increasing – which is the opposite of Mr. Rhinehart's inference. The increases in these CWF investments over the past several years[38] were not based upon the fluctuations in the Access Division's projections for its overall interstate throughput – which declined by approximately 28% between 2012 and 2016.[39]

[38] Ex. 11, Aureon's 2010 Tariff Filing (filed June 16, 2010), at Section 5, Part 64 Separations, Schedule S-2, Line 4 (Cable & Wire Facilities) ($26,818,101); Ex. 12, Aureon's 2012 Tariff Filing (filed June 26, 2012), at Section 5, Part 64 Separations, Schedule S-2, Line 4 (Cable & Wire Facilities) ($43,102,372); Ex. 13, Aureon's 2013 Tariff Filing (filed June 17, 2013), at Section 5, Part 64 Separations, Schedule S-2, Line 4 (Cable & Wire Facilities) ($57,085,004); Ex. 14, Aureon's 2014 Tariff Filing (filed June 16, 2014), at Section 5, Part 64 Separations, Schedule S-2, Line 4 (Cable & Wire Facilities) ($59,282,926); Ex. 15, Aureon's 2016 Tariff Filing (filed June 16, 2016), at Section 5, Part 64 Separations, Schedule S-2, Line 4 (Cable & Wire Facilities) ($74,866,654); Ex. 16, Aureon's 2017 Tariff Filing (filed Apr. 14, 2017), at Section 4, Part 64 Separations, Schedule S-2, Line 4 (Cable & Wire Facilities) ($68,284,259).

[39] Ex. 11, Aureon's 2010 Tariff Filing, at Section 2, Schedule A, Line 2 (3,481,819,561 minutes); Ex. 12, Aureon's 2012 Tariff Filing, at Section 2, Schedule A, Line 2 (3,339,631,164 minutes); Ex. 13, Aureon's 2013 Tariff Filing, at Section 2, Schedule A, Line 2 (2,925,535,070); Ex. 14, Aureon's 2014 Tariff Filing, at Section 2, Schedule A, Line 2 (2,019,322,322 minutes); Ex. 15, Aureon's 2016 Tariff Filing, at Section 2, Schedule A, Line 2 (2,508,443,160 minutes).

30. Aureon's traffic volume for CEA service began decreasing in 2012, and by 2016 had decreased by 1,025,042,815 minutes annually from 3,833,504,867 minutes in 2011 to 2,808,462,052 minutes in 2016, which represents more than a 26% decline in CEA traffic volume. There has been a corresponding significant decrease in Aureon's interstate CEA gross revenue of $11,303,912 from $31,419,869 in 2011 to $20,115,957 in 2015, which constitutes a revenue decrease of nearly 36%. A primary factor for the decline in traffic is likely due to a huge decrease in traffic related to access stimulation by subtending LECs. The annual traffic volume that Aureon assumes is the result of access stimulation by subtending LECs decreased by more than 912 million minutes between 2011 and 2016. Traffic volume is determined by IXCs. As stated in Aureon's 2013 tariff filing, the impetus for upgrading Aureon's network facilities was primarily the increasing age of Aureon's network, and the resulting degradation in the quality of its facilities – *not* its forecasted demand for capacity.[40] As a result of such upgrades, replacement of older facilities with newer technologies has resulted in the ancillary benefit of increased capacity – despite recent decreases in the Access Division's overall interstate throughput. Accordingly, any concerns regarding the impact of increased infrastructure investments on Aureon's lease cost calculations are unfounded.

31. Aureon's projected lease cost per MOU allocated to the Access Division does not demonstrate that Aureon has over allocated its network costs to the Access Division. As demonstrated by Mr. Rhinehart, Aureon's projected lease cost per MOU allocated to the Access Division steadily declined from 2005 to 2013, increased in 2014 and 2015, and declined again in

[40] Ex. 13, Aureon 2013 Tariff Filing, Introduction, Overview and Rate Development at 2 ("Over the years, [Aureon] has implemented a state of the art fiber network throughout the state of Iowa . . . . *As this network ages*, [Aureon] has plans to upgrade its fiber routes and electronics to bring newer technologies and increased capacity in areas where needed.") (emphasis added).

2017.[41] As stated above, the reasons for these fluctuations in traffic is indeterminable by Aureon because traffic volume is determined by IXCs. As with lease cost forecasts discussed above, fluctuations in the annual projected lease cost per MOU resulted from annual variances in access stimulation traffic volume estimates. Similarly, because Aureon is not involved in access stimulation, it is difficult for Aureon to predict how much access stimulation traffic will be routed across its CEA network – which, in turn, affects its ability to forecast lease costs paid by its Access Division. Accordingly, Aureon's projected lease cost per MOU between 2005 and 2013 do not demonstrate that Aureon over-allocated its network costs to the Access Division. Mr. Rhinehart's arguments concerning the unreasonableness of the differential between the rate charged by the IXC Division to the Access Division and the rate charged to another party are based on significantly flawed assumptions, and should not be given any credence in this proceeding.

Aureon's Allocation of Costs between Interstate and Intrastate Traffic is Appropriate, and is not Within Aureon's Control.

32. In his declaration, Mr. Rhinehart states that he has concerns regarding the Access Division's intrastate and interstate traffic allocation because the *FCC 214 Order* purportedly stated that if the traffic mix materially changed, the FCC would need to revisit that issue. Mr. Rhinehart misstates the FCC's ruling. Paragraph 32 of the *FCC 214 Order* cited by Mr. Rhinehart was concerned not with whether the FCC would need to reexamine Aureon's rates for the CEA network if the traffic ratios changed. Rather, the FCC was concerned with whether the Iowa Utilities Board would require Northwestern Bell, which at the time was the largest carrier of intrastate toll traffic, to route interexchange traffic over the CEA network.[42] The FCC stated that if the appropriate state agencies did not approve the Access Division proposal to impose a mandatory use policy for

[41] Rhinehart Decl. ¶ 26.

[42] *FCC 214 Order*, 3 FCC Rcd. at 1473, ¶ 32.

intrastate calls, the FCC would need to review a modified proposal involving mandatory use only for interstate calls.[43] The Iowa Utilities Board ultimately approved Aureon's proposal to impose a mandatory use policy for intrastate traffic, thereby satisfying the FCC's condition as set forth in Paragraph 32 of the *FCC 214 Order*.[44]

33. It is important to note that Aureon does not have any control over the jurisdiction of the traffic that is sent by IXCs to the CEA network. The intrastate and interstate traffic allocations are simply a function of the traffic on the network. Mr. Rhinehart surmises that in 2008, there was a change in the percentage of interstate use ("PIU") factor that led to more of Aureon's revenue requirement being allocated to interstate. The change in PIU factor was not due to an arbitrary decision by Aureon to designate more traffic as interstate. Rather, the change was due to upgrades in Aureon's equipment to better track the jurisdiction of the calls on the CEA network.

34. In 2007, Aureon upgraded its CEA switches, which enabled Aureon's billing system to process and download call records directly from the switch, rather than from a legacy third-party system that had been in place for years. Around that same timeframe, Aureon implemented a new billing system that converted the jurisdiction calculation from using jurisdiction information parameters ("JIPs") and location routing numbers ("LRNs") to originating and terminating numbers. This change resulted in more accurate identification of interstate calls because, while most Iowa LECs included JIP and/or LRN information with their call data, traffic from other carriers did not include that information. Before the upgrade, the identification of intrastate traffic was considerably more accurate than the identification of interstate traffic. Since

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[43] *Id*.

[44] *See FCC 214 Recon. Order*, 4 FCC Rcd. at 2201, ¶ 7 (submission of documentation by Aureon of grant of state authority satisfied the condition in Paragraph 32 of the *FCC 214 Order*).

the jurisdiction of "unknown traffic" was proportioned based on the volume of "known" traffic, improving the identification of interstate traffic not only increased the number of calls that could be identified by call records, it also altered the PIU that was applied to unknown traffic. Properly developed PIU factors reported by IXCs are used to allocate between jurisdictions any remaining traffic for which the jurisdiction has not been identified by Aureon's systems.

35. As part of the process to validate the accuracy of the jurisdiction identification system, Aureon audited its procedures and identified a number of issues in its records that impacted the accuracy of its billing. Aureon audited the bills for all of the carriers using the CEA network, and proactively contacted them to inform them of any errors.

36. Mr. Rhinehart's suggestion that Aureon has engaged in improper jurisdictional shifting of traffic is simply without merit. Changes to the PIU factor in Aureon's tariff filings were, in fact, due to more accurate classification of the traffic allocations. It was unnecessary for Aureon to bring this to the FCC's attention because the condition in Paragraph 32, i.e., that the state agencies approve the mandatory use policy for intrastate traffic, had been met as required by the Commission. Aureon's interstate PIU factors used for its tariff filings are based on the best available information that it has regarding the traffic on the CEA network, and Aureon's CEA interstate tariff rate takes that information into account.

Aureon's Traffic Forecasts are Reliable Given the Information Aureon had at the Time the Forecasts Were Made.

37. Mr. Rhinehart attacks the reliability of the traffic forecasts used by Aureon to develop its CEA rates, stating that there is "a lot of variation from year to year" in Aureon's test period traffic forecasts.[45] Forecasting traffic over a long time period is difficult, particularly when

[45] Rhinehart Decl. ¶¶ 34-35.

Aureon has no control over the traffic sent by other carriers over its network. Aureon developed a model in a good faith attempt to forecast the amount of intrastate and interstate traffic Aureon expects in the future. However, there are variables that Aureon cannot control, and over which Aureon has no control.

38. The test period forecasts of traffic volume in the cost support for Aureon's tariff filings has varied due to fluctuations in access stimulation traffic. Because Aureon is not involved in access stimulation, has no involvement with call aggregators, and does not have any revenue sharing or any other such agreements with any entities, it is difficult for Aureon to predict how much call aggregation traffic will be routed over the CEA network. Aureon does not have any insight into the long term plans of other carriers, which may include direct connections with terminating providers and bypassing the Aureon network altogether, which impact Aureon's traffic forecasts.

39. It is important to note that Aureon's traffic forecasts are actually more accurate than Mr. Rhinehart suggests. The following table, which is a duplicate of the first three columns of data in Table H of Mr. Rhinehart's declaration, shows the percent difference between the projected and actual demand. Mr. Rhinehart's table omits the percent difference calculation, which is a more meaningful comparison since the total number of minutes of traffic varies from year to year:

Test Period	Projected Demand	Actual Demand	Percent Difference
7/1/04 to 6/30/05	876,231,538 min.	930,533,227 min.	6.19%
7/1/06 to 6/30/07	1,296,905,198 min.	1,707,544,370 min.	31.66%
7/1/08 to 6/30/09	2,346,089,248 min.	2,576,662,181 min.	9.83%
7/1/10 to 6/30/11	3,481,819,561 min.	3,756,655,810 min.	7.89%
7/1/12 to 6/30/13	3,339,631,164 min.	3,165,619,256 min.	(5.21)%
7/1/13 to 6/30/14	2,925,535,070 min.	2,742,967,138 min.	(6.24)%
7/1/14 to 6/30/15	2,019,322,322 min.	2,470,990,085 min.	22.37%
7/1/16 to 6/30/17	2,508,443,160 min.	n/a	n/a

40. For the test periods examined by Mr. Rhinehart, the actual demand in all but two test periods were within 10% of traffic forecasts, and three test periods were within approximately 5-6% of traffic forecasts.

41. It is important to note that the traffic demand is just one element that goes into determining the CEA rate. Ultimately, setting aside the issue of whether Aureon's rate is deemed lawful under Section 204(a)(3) of the Communications Act, and therefore reasonable,[46] whether Aureon's rate is reasonable turns on whether the Access Division experienced a return that exceeded the FCC's maximum authorized rate of return. AT&T has failed to fully pay Aureon's CEA invoices for services provided since August 2013. During that time period, as shown in the table below, Aureon earned less than the FCC's maximum authorized rate of return of 11.5%, and less than the FCC's target rate of return of 11.25%.

Test Period	Projected Rate of Return	Actual Rate of Return
7/1/13 to 6/30/14	10.79%	3.03%
7/1/14 to 6/30/15	(202.18%)	(343.36%)
7/1/16 to 6/30/17	(171.69%)	n/a

42. Mr. Rhinehart further states that Aureon's recent forecasts show declining demand, while AT&T's traffic on the CEA network is increasing, thus suggesting that AT&T's traffic represents the majority of total CEA minutes of use, and that AT&T's traffic has a direct correlation to traffic demand for the CEA network. The increase in AT&T's traffic sent to the CEA network is likely the result of AT&T acting as the intermediate carrier for other IXCs. The traffic of some large IXCs have virtually disappeared from Aureon's network. The only logical explanation for this occurrence is that such traffic is being sent to Aureon through other carriers,

[46] 47 U.S.C. § 204(a)(3).

such as AT&T. However, once that traffic is commingled with AT&T's own traffic, Aureon does not have the ability to distinguish between AT&T's traffic, and the traffic that AT&T is transiting for other IXCs. While the volume of traffic that AT&T sends for its own end user customers and for other IXCs is increasing, Aureon's models are forecasting an overall decline in traffic carried over the CEA network.

Aureon's Inclusion of Uncollectible Revenues in its Revenue Requirement is Appropriate.

43. The last "area of concern" raised by Mr. Rhinehart involves Aureon's inclusion of uncollectible revenues in its revenue requirement. While Mr. Rhinehart faults Aureon for including uncollectible revenues in its revenue requirement, he makes no effort to reconcile the fact that these revenues were part of Aureon's revenue requirement in the past, and Aureon has not been paid for services already rendered.

44. The uncollectible revenues represent amounts that Aureon properly billed for CEA service provided under its CEA tariff to other carriers. Uncollectible revenues are a known direct cost (i.e., a reduction in net operating income) of providing CEA service. As such, Aureon properly included the cost of uncollectible revenues in its cost studies as those revenues directly relate to the forecast minutes-of-use that are also used in those studies.

45. It is important to note that AT&T admits that uncollected accounts receivable can be included in the regulated revenue requirement for CEA services if those amounts were properly billed. In its Legal Analysis, AT&T cites the *Annual 1988 Access Tariff Filings*, wherein the Commission stated that "[u]ncollectible revenues *are* included in the interstate revenue requirements to reflect properly billed revenues which cannot be collected."[47] As there is no

[47] AT&T Legal Analysis at 61 (quoting *Annual 1988 Access Tariff Filings*, Memorandum Opinion and Order, 3 FCC Rcd. 1281, 1310-11, ¶ 245 (1987)) (other citations omitted).

dispute between Aureon and AT&T that the rates Aureon billed AT&T were the same rates that are contained in Aureon's tariff, the amounts that have been billed and not paid by AT&T and other CEA service customers were properly billed and includable in the regulated revenue requirement. Furthermore, **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** Accordingly, the inclusion of "Uncollectible Revenues" in Aureon's revenue requirement does not have the potential effect of inflating Aureon's CEA service rate.

46. Mr. Rhinehart states that by including uncollectible revenues in its cost studies, Aureon is effectively requiring its other CEA customers to pay for services provided to non-paying IXCs. The same can be said of AT&T. In recent years, AT&T has become a primary cause of the bad debt reserve as AT&T has refused to fully pay for CEA service Aureon properly billed under its CEA tariff.

Overall Reasonableness of Aureon's CEA Service Rate.

47. Contrary to Mr. Rhinehart's assertions, Aureon's CEA rate is reasonable. Any comparisons that Mr. Rhinehart attempts to make between Aureon's CEA service and access service provided by LECs, are misplaced because an individual LEC's access service is not CEA service. CEA service provides IXCs with traffic concentration and distribution of calls to the rural exchanges of more than 200 LECs by making available more than 2,700 miles of transport facilities and two access tandem switches at a single interstate CEA rate. The CEA tariff rate reflects the costs and value associated with a CEA network with redundant access tandems, signaling systems and databases, and a fiber network spanning more than 2,700 miles to hundreds of local exchanges.

[48] *See* Ex. 56, Letter from James U. Troup & Tony S. Lee, Counsel for Aureon, to Michael J. Hunseder & James F. Bendernagel, Counsel for AT&T, at 2 (dated Mar. 23, 2017).

48. The allocation of costs by Aureon to the Access Division have been performed in accordance with Section 61.38 and Parts 32, 36, 64, and 69 of the Commission's rules as they apply to dominant carriers. Aureon has properly calculated its CEA revenue requirement and CEA tariff rates using proper accounting methods and in accordance with the Commission's rules. Aureon has utilized the same methodology for calculating its revenue requirement that was employed with its original tariff filing, which the Commission approved after rejecting AT&T's allegation that the cost support was insufficient.[49] To the extent that there have been changes in the PIU factors used in Aureon's traffic studies over the years, that is due to the nature of the traffic sent to the CEA network by the IXCs that use Aureon's CEA service – not as a result of any manipulation of the traffic jurisdictions by Aureon. As previously explained, Aureon upgraded its switches in 2007, which enabled Aureon to more accurately identify whether calls were interstate or intrastate. That information is taken into account in Aureon's PIU and cost studies in order to develop the CEA rate billed to IXCs.

49. To the extent that there is any manipulation of traffic that is occurring on the CEA network, it appears that AT&T is likely involved in those activities. While Aureon's models indicate that the overall volume of traffic on the CEA network is projected to decline, AT&T nevertheless states that the traffic it is sending to the CEA network is increasing. Given that CEA traffic for some of the large IXCs has significantly declined or disappeared altogether, it appears that AT&T may be engaging in a form of arbitrage where AT&T acts as an intermediate carrier for other IXCs and is paid by those IXCs, while at the same time, AT&T extracts an effective lower rate for CEA service provided by Aureon by not fully paying Aureon's invoices.

[49] *FCC Tariff Order*, 4 FCC Rcd. at 3947, ¶¶ 4, 9-10.

[[BEGIN HIGHLY CONFIDENTIAL INFORMATION]]

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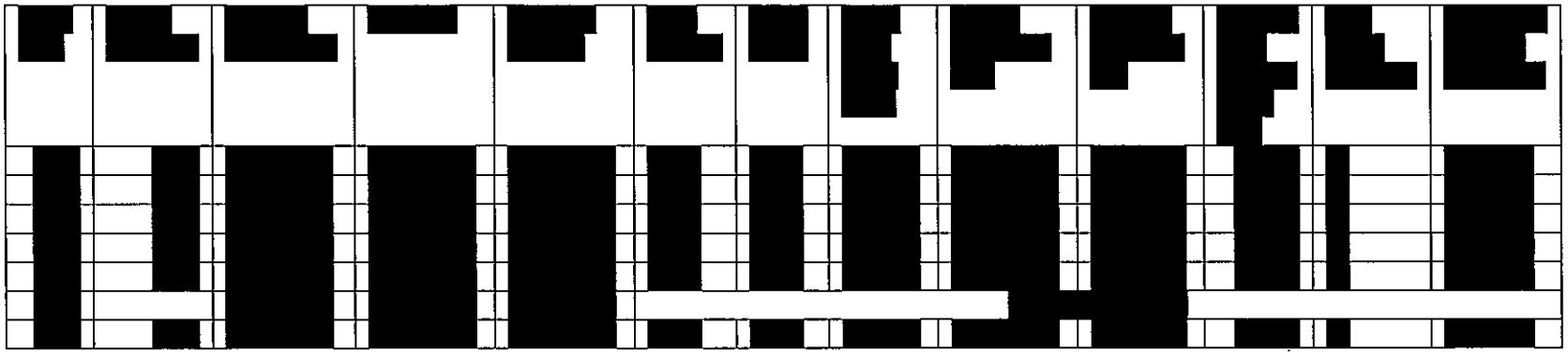

[[END HIGHLY CONFIDENTIAL INFORMATION]]

I certify under penalty of perjury that the foregoing is true and correct.

Executed on June 28, 2017.

Jeff Schill

EXHIBIT B

DECLARATION OF FRANK HILTON

HIGHLY CONFIDENTIAL MATERIALS OMITTED

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
AT&T CORP.,	)	
	)	Docket No. 17-56
Complainant	)	
	)	Bureau ID No. EB-07-MD-001
vs.	)	
	)	
IOWA NETWORK SERVICES, INC., d/b/a AUREON NETWORK SERVICES	)	
	)	
Respondent.	)	

DECLARATION OF FRANK HILTON

I, FRANK HILTON, hereby declare as follows:

1. I am the Vice President of Business Consulting for Iowa Network Services, Inc. d/b/a Aureon Network Services ("Aureon"). I make this declaration voluntarily in support of Aureon's Answer to AT&T Corp.'s ("AT&T") Complaint. I have more than forty years' experience in the IT and telecommunications industries, and have worked for Aureon for approximately twenty years. My responsibilities at Aureon include overseeing Aureon's systems related to collecting network usage data, ensuring that information collected by the network regarding traffic routed over Aureon's network is coordinated with the preparation and issuance of invoices to carriers that use Aureon's centralized equal access ("CEA") service provided though Aureon's network, and maintaining call detail records and related information that may be needed for disputes from other carriers regarding bills issued by Aureon for CEA service.

2. I am also generally aware of and familiar with Aureon's preparation and filing of its tariff and tariff review plan ("TRP") with the Federal Communications Commission ("FCC,"

or "Commission"). I am also generally aware of and familiar with Aureon's tariffs with the Nebraska Public Service Commission and the Iowa Utilities Board. In order to perform my duties, I am required to have general knowledge of all aspects of Aureon's operations. The information provided herein is based on my personal knowledge, my review of documents and records kept by Aureon in the regular course of business, and my review of documents publically filed and available at the FCC and the Iowa Utilities Board.

3. Aureon is a CEA service provider incorporated in the State of Iowa, and has its principal place of business in West Des Moines, Iowa. Aureon provides CEA service to: Illinois, Minnesota, Iowa, Missouri, Nebraska, and South Dakota. Iowa Network Access Division ("INAD") is Aureon's operating division that provides CEA service to interexchange carriers ("IXCs"), including AT&T. CEA service acts as a bridge between the networks of long distance telephone companies, like AT&T, and the local exchange networks of more than 200 LECs. CEA service involves AT&T's use of Aureon's facilities between a LEC's network and AT&T's long distance network to enable an AT&T customer located in the LEC's service area to place a long distance call. CEA service also involves AT&T's use of Aureon's facilities between AT&T's long distance network and a LEC's network to enable an AT&T customer to complete long distance calls to phones and other equipment located in the town where the LEC provides local telephone service. CEA service is not local telephone service, and is provided only to carriers (and not end users). CEA service has succeeded in making it attractive for fifteen IXCs to use the CEA network to originate traffic, and for seventeen IXCs to use the CEA network to terminate traffic.

4. As discussed above, as part of my responsibilities, I am required to be generally familiar with Aureon's operations, which includes being generally familiar with the operations of many of the larger carriers that connect to Aureon's facilities. As a result of my responsibilities, I

am aware that one of the largest carriers that uses Aureon's CEA service is AT&T Corp. AT&T Corp. is a New York corporation with its principal place of business in Bedminster, New Jersey. AT&T Corp. provides interstate long distance telephone service to customers located in several states, including customers located in: New Jersey, Illinois, Minnesota, Iowa, Missouri, Nebraska, and South Dakota. As discussed above, CEA service is not provided to end users, and Aureon cannot recover any reductions in intercarrier revenues through increases in end user charges. Furthermore, Aureon's CEA service does not receive money from the Connect America Fund or the Universal Service Fund. Aureon's CEA operations rely exclusively on the revenues that it receives from IXCs for its CEA service.

5. Based on my experience, AT&T provides long distance telecommunication service to its customers, AT&T does not operate local exchange facilities in all the states where Aureon offers CEA service, and AT&T's long distance network generally does not extend to all the networks of local exchange carriers ("LECs") connected to Aureon's CEA service. AT&T has routed calls to Aureon for transmission through Aureon's networks to and from AT&T's customers. By routing calls through Aureon's network, AT&T utilized Aureon's CEA service, and benefits from Aureon's CEA service.

6. As part of my responsibilities, I am required to be generally familiar with Aureon's tariffs, and to be generally familiar with Aureon's CEA tariff filings, which were properly made with the FCC, Nebraska Public Service Commission, and the Iowa Utilities Board. Aureon's CEA tariffs are currently effective. LECs that are connected to Aureon's network are referred to as "subtending LECs." Aureon operates wires and facilities that span the distance between AT&T's long distance network and the subtending LECs' networks. Subtending LECs have agreed to route AT&T's traffic over the CEA network, and those subtending LECs are listed as Routing Exchange

Carriers in Aureon's tariff for purposes of CEA service. More than 200 Routing Exchange Carriers are listed in the CEA tariff, and the carrier list has included CLECs for several years.

7. The CEA service that Aureon provided to AT&T is governed by the CEA tariffs. The tariffs include the rates and terms for CEA service. CEA service is described in Aureon's FCC tariff as follows:

> Iowa Network provides a two-point electrical communications path between a point of interconnection with the transmission facilities of an Exchange Telephone Company at a location listed in Section 8 following and Iowa Network's central access tandem where the Customer's traffic is switched to originate or terminate its communications. It also provides for the switching facilities at Iowa Network's central access tandem.[1]

8. Based on my general familiarity with Aureon's network, operations, and tariffs, and with AT&T's connection and routing of traffic to Aureon, I can confirm that Aureon provides CEA service to AT&T pursuant to the rates, terms, and conditions contained in Aureon's tariffs filed with the FCC, the Nebraska Public Service Commission, and the Iowa Utilities Board. The CEA network provides a "through route" between AT&T's long distance network and the networks of other carriers, such as LECs. Aureon provided CEA service to AT&T as described in Aureon's tariffs, and AT&T used Aureon's services as described in Aureon's tariffs. Based on my review of Aureon's tariffs, the definition of CEA service described in Aureon's tariffs is set forth at: INAD Tariff F.C.C. No. 1, § 6.1, 4th Revised Page 88 (Ex. 47); Nebraska P.S.C. Tariff No. 3, § 6.1.1(A), Original Page 169 (Ex. 40); and Iowa Tariff No. 1, § 6.1.1(A), 3rd Revised Page 141 (Ex. 34). Aureon's tariffs do *not* state that CEA service for access stimulation traffic is not like CEA service for other types of terminating traffic.

[1] Ex. 47, INAD Tariff F.C.C. No. 1, § 6.1, 4th Revised Page 88.

9. Furthermore, I have reviewed the following sections of Aureon's tariffs: INAD Tariff F.C.C. No. 1, § 5.1.1, 1st Revised Page 69 (Ex. 45), § 6.1.1(F), Original Page 91 (Ex. 48), § 6.5.2, 1st Revised Page 129 (Ex. 49), § 6.5.5, Original Page 131 (Ex. 50); Nebraska P.S.C. Tariff No. 3, § 5.1.1, Original Page 141 (Ex. 39), § 6.1.1(F), Original Page 177 (Ex. 41), § 6.5.5, Original Page 219 (Ex. 42); and Iowa Tariff No. 1, § 5.1.1, 1st Revised Page 118 (Ex. 33), § 6.1.1(F), 1st Revised Page 145 (Ex. 35), § 6.5.5, Original Page 185 (Ex. 36). Each of those sections state that the routing of traffic for AT&T will be determined by Aureon, and is completely within Aureon's discretion. For example, Section 5.1.1 of Aureon's FCC Tariff No. 1 provides, in relevant part, that "Iowa Network will determine the Switched Transport facilities to be provided between an Iowa Network premises set forth in Section 8 following and Iowa Network's central access tandem on the basis of the capacity ordered."[2] The other sections noted above contain similar language. When AT&T routes calls via Aureon's facilities, the only route that those calls can take include: (1) switching at Aureon's central access tandem; and (2) the two-way electrical communications path between Aureon's central access tandem and the networks of the LECs that choose to connect with Aureon's facilities.

10. Based on my knowledge of Aureon's operations and Aureon's tariffs, CEA service provided by Aureon to AT&T complies with the description of CEA service in Aureon's tariffs, and includes access stimulation terminating traffic. The rates for CEA service that Aureon billed AT&T are contained in the CEA tariffs. The CEA tariff rate in Aureon's interstate tariff is referred to as the switched transport rate. That single switched transport rate recovers the costs of both transport and tandem switching. In order to make rural areas more attractive for small IXCs to serve, Aureon charges a non-distance sensitive interstate switched transport rate that provides

[2] Ex. 45, INAD Tariff F.C.C. No. 1, § 5.1.1, 1st Revised Page 69.

IXCs with access to the more than 2,700 mile CEA network. The average distance between the CEA tandem and the points of interconnection with LECs is 101 miles.

11. AT&T has ordered CEA service from Aureon by sending access service requests ("ASRs") to Aureon. In response to AT&T's ASRs, Aureon sent AT&T confirmations in the form of "firm order commitments." As requested by AT&T's ASRs, Aureon provided CEA service with the capacity to carry the volume of traffic that AT&T routed over the CEA network and for which Aureon has billed AT&T. Aureon rendered performance in compliance with the CEA tariffs and AT&T's ASRs.

12. Aureon's switches automatically record the traffic sent by AT&T to Aureon's network for routing to and from AT&T's customers. Each month, Aureon's billing system applies the appropriate tariff rate to the number of minutes of CEA service used by AT&T, and invoices are generated by Aureon's billing system, which processes the automatically recorded minutes-of-use data, and applies the appropriate tariff rate to bill AT&T. I am required to oversee this process to ensure that the appropriate rates are applied to AT&T's minutes-of-use. The invoices that Aureon sent to AT&T are calculated in accordance with the rates set forth in Aureon's tariffs. The rates set forth in its tariffs are the same rates Aureon charged AT&T for CEA service that Aureon provided to AT&T, and that AT&T used to complete calls for its customers.

13. When Aureon revised the rate in its FCC tariff on June 17, 2013, Aureon filed cost and usage data supporting the calculation of the CEA tariff rate in accordance with 47 C.F.R. § 61.38. In that filing, Aureon proposed a small increase in the price of CEA service from $0.00623 per minute to $0.00896 per minute.[3] The tariff pages filed with the FCC on June 17, 2013 state

[3] Ex. 13, Aureon's 2013 Tariff Filing (filed June 17, 2013), Introduction, Overview and Rate Development at 1.

that the effective date is July 2, 2013. The June 17, 2013 FCC tariff rate revision was electronically filed with the FCC, and was publicly available on June 17, 2013 for AT&T to review before it became effective. Based on my review of the FCC's electronic filing system of filings made by the public in connection with Aureon's June 17, 2013 tariff filing, I can confirm that AT&T did not file any petition with the FCC to suspend or other complaint at that time regarding the June 17, 2013 FCC tariff rate revision. Based on my review of the FCC's electronic filing system, between the June 17, 2013 filing date and the July 2, 2013 effective date, the FCC did not suspend the FCC tariff rate revision or take any other action regarding that tariff filing.

14. Based on my responsibilities, which requires me to be generally familiar with Aureon's financial affairs, I can confirm that beginning with Aureon's September, 2013 invoice (for CEA service provided in August, 2013), AT&T has failed to fully pay the filed CEA tariff rates. Aureon sends monthly invoices to AT&T. Prior to the September 2013 invoice, AT&T fully paid the prices in the CEA tariffs as set forth in Aureon's invoices, and did so for more than twenty years. Although AT&T has made some payments to Aureon, those payments were less than the amounts that Aureon billed AT&T for CEA service AT&T used according to the information automatically recorded by Aureon's switches, and then processed by Aureon's billing system. During the period of time for which AT&T has been withholding payment, Aureon has provided CEA service to AT&T, which included switching and transport services. Specifically, Aureon carried calls placed by some of AT&T's customers that were routed to AT&T's long distance network. Since 2013, Aureon's annual total traffic volume for CEA service provided to all IXCs has remained stable, and has not resulted in a meaningful increase in Aureon's revenue. AT&T's share of that CEA traffic volume has increased from 48% of the total CEA traffic volume in 2013 to 75% of the total CEA traffic volume in 2016. As AT&T exerted control over a larger

share of the total CEA traffic volume, AT&T ordered more trunks from Aureon, which significantly increased Aureon's costs, and then AT&T refused to pay Aureon to recover those additional costs. AT&T continues to take CEA service from Aureon, and AT&T has not notified Aureon that it wants Aureon to disconnect AT&T from the CEA network.

15. It is my understanding that AT&T has raised the issue of whether traffic routed by Aureon for AT&T to Great Lakes Communication Corporation ("Great Lakes") was proper. Based on my review of Aureon's tariffs, I can confirm that Great Lakes is listed in Aureon's FCC CEA tariff as a LEC that has elected to route traffic via Aureon's CEA network. Because Great Lakes has chosen to interconnect with Aureon's network, the CEA tariffs require AT&T to interconnect with Aureon's network for traffic originating from or terminating to Great Lake's facilities. As part of my responsibilities, I have become generally familiar with the contracts that Aureon has entered into with other entities. I have reviewed the agreements between Great Lakes and Aureon. Aureon is not a party to an access revenue sharing agreement with Great Lakes or any other entity, and Aureon has not made a net payment to anyone pursuant to a revenue sharing agreement. None of the traffic agreements with any LEC involve net payments or any other form of revenue sharing. Moreover, Aureon has never engaged in access stimulation, and bills rates under Section 61.38 of the Commission's rules that decrease as volume increases.

16. It is my understanding that AT&T has asserted that Aureon is an ILEC because Aureon files its tariffs with the FCC pursuant to Section 61.38 of the FCC's rules. As an initial matter, it is my understanding that an ILEC needs to be a member of the National Exchange Carrier Association ("NECA"). Aureon is not a member of NECA, and does not provide telephone exchange service. CEA service does not provide local telephone service between end users located within the same local exchange area. Furthermore, Aureon has never filed its tariffs as an ILEC

with the FCC. Instead, Aureon serves as an intermediate carrier transmitting calls between AT&T's network and exchanges served by third party LECs. CEA service is provided and billed to carriers, such as AT&T. Aureon provides CEA service in the same manner that it did in 1988 when the FCC granted Section 214 authority to Aureon.

17. I have reviewed Section 61.38 of the Commission's rules, and that section states that the requirement to file tariffs pursuant to Section 61.38 "applies to dominant carriers."[4] In my experience, Aureon has not and does not file its tariff with the FCC as an ILEC. Aureon filed its revised tariff and TRP pursuant to Section 61.38 because it is a dominant carrier, and Section 61.38 states that it applies to dominant carriers, and not just ILECs.[5] Aureon has also filed its CEA tariff pursuant to the procedures the Commission established for filing "deemed lawful" tariffs under Section 204(a)(3) of the Communications Act. Aureon is not a "Price Cap Carrier" because Aureon is not a LEC subject to price cap regulation pursuant to 47 C.F.R. §§ 61.41 through 61.49.

18. Furthermore, I am aware that Aureon participated as a party in an FCC rulemaking proceeding which, among other issues, is considering whether any rate caps should be adopted for CEA service. Aureon filed comments in that proceeding confirming that Aureon is not an ILEC or rate-of-return carrier. I have reviewed comments filed by Aureon and South Dakota Network, LLC ("SDN") on February 24, 2012 in WC Docket No. 05-337. In those comments, Aureon and SDN stated that they "file revisions to their interstate access tariffs every two years with the full cost support required by Section 61.38 of the Commission's rules", and that they "are not ILECs or CLECs [competitive local exchange carriers]."[6]

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[4] 47 C.F.R. § 61.38.

[5] *See id.*

[6] Ex. 17, Comments of Iowa Network Services, Inc. & South Dakota Network, LLC, *Connect America Fund, et al.*, WC Docket No. 05-337, *et al.*, at 7 (filed Feb. 24, 2012).

19. Based on my responsibilities, I am aware that Aureon filed a revised tariff on June 17, 2013 pursuant to an FCC Order that established the procedures for the 2013 filing of annual access charge tariffs and TRP for carriers subject to price caps, as well as rate of return carriers subject to Section 61.39 of the Commission's rules, and those carriers subject Section 61.38 of the Commission's rules.[7] However, Aureon did not file its tariff as an ILEC, nor did it file its tariff pursuant to Section 61.39. Aureon filed its revised tariff and TRP pursuant to Section 61.38 because it is a dominant carrier, and Section 61.38 states that it applies to dominant carriers. Aureon has never filed tariffs pursuant to Section 61.39 of the Commission's rules.[8] Moreover, based on my experience, the FCC has never regulated CEA service rates under CLEC rate benchmarking or ILEC price caps. Aureon has always calculated its tariff rates as required by Section 61.38 for dominant carriers, on the basis of cost studies and call volume data designed to ensure that Aureon did not earn more than a reasonable rate of return on its investment. As the volume of traffic increases, the CEA rate decreases, and vice versa. Aureon's June 17, 2013 tariff rate revision reflects the traffic volume, which AT&T contends resulted from access stimulation by LECs, and Aureon has reduced its CEA tariff rate to reflect increases in traffic volumes.[9] The traffic and cost studies submitted with Aureon's most recent tariff filing reflected costs and demand, including the additional facility costs and traffic on Aureon's network resulting from access stimulation by carriers other than Aureon. For approximately thirty years, Aureon has calculated its CEA rate and filed its CEA tariff consistent with the 1988 Section 214 Order, Section

[7] Ex. 13, Aureon's 2013 Tariff Filing, Introduction, Overview and Rate Development at 1.

[8] 47 C.F.R. § 61.39.

[9] *See* Ex. 13, Aureon's 2013 Tariff Filing, Introduction, Overview and Rate Development at 1-5.

61.38 of the Commission's rules, and Section 204(a)(3) of the Act, and the Commission has never indicated that Aureon is not a dominant carrier.

20. With regard to the rates that Aureon has charged AT&T, I have reviewed Aureon's FCC tariffs and internal records to determine the rates that Aureon charged AT&T. At the end of 2011, Aureon billed AT&T an interstate rate of $0.00819 per minute for CEA service.[10] In June 2012, Aureon decreased the interstate rate billed to AT&T to $0.00623 per minute,[11] which is approximately a 24% decrease in the rate billed to AT&T at the end of 2011. In July 2013 Aureon increased the interstate rate billed to AT&T to $0.00896 per minute,[12] which is less than a 10% increase in the rate billed to AT&T at the end of 2011. The prices that Aureon billed AT&T for CEA service since September 1, 2013, are the same prices that are currently effective in the CEA tariffs. The dollar amounts billed by Aureon can be calculated by applying the prices in the CEA tariffs to AT&T's minutes-of-use for CEA service. Aureon expected remuneration from AT&T at the time it performed the ordered service, and AT&T was on notice that Aureon's services were offered with the expectation of compensation at the CEA tariff prices. The purpose of Aureon's traffic agreements is to provide CEA service to IXCs with respect to a particular LEC's exchange. Access stimulation, on the other hand, is not the purpose of those CEA traffic agreements. Accordingly, those agreements are *not* revenue sharing agreements, and therefore do not involve any net payments. Furthermore, the Aureon-CLEC traffic agreements contain similar terms and conditions as those contain in the CEA traffic agreements with all other LECs since they were instituted in 1988 as a consequence of the *IUB Rehearing Order*.

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[10] Ex. 12, Aureon's 2012 Tariff Filing (filed June 26, 2012), Introduction, Overview and Rate Development at 1.

[11] *Id.*

[12] Ex. 13, Aureon's 2013 Tariff Filing, Introduction, Overview and Rate Development at 1.

21. Like other CEA participation/traffic agreements, the purpose of Aureon's traffic agreement with Great Lakes is to obtain Great Lakes' agreement to connect to the CEA network so that Aureon can provide CEA service to IXCs that desire access to Great Lakes' exchange. The Aureon-Great Lakes traffic agreement describes the service that Aureon will provide as CEA service as defined in Aureon's tariff. The service that Aureon provided to AT&T for traffic that AT&T contends is access stimulation terminating traffic was CEA service as defined in the tariff. CEA service under the CEA tariffs is only provided and billed to IXCs.[13] Furthermore, as referenced above, the terms of the Aureon-Great Lakes traffic agreement are nearly identical to the terms of all other CEA participation agreements that the Iowa Utilities Board has required of Aureon as a prerequisite to providing CEA service to a particular LEC's exchange. Those participation agreements implement the Iowa Utilities Board's requirement that Aureon enter into a participation agreement prior to providing CEA service to IXCs with respect to a particular LEC's exchange. Absent from all of Aureon's traffic agreements – whether with ILECs or CLECs – is any charge to the LEC because CEA service under the CEA tariffs is provided and charged to the IXC. To my understanding, as authorized by the Iowa Utilities Board and upheld on appeal, all of Aureon's CEA traffic agreements with ILECs and CLECs require all switched access traffic associated with a LEC's end office to be routed over the CEA network.

22. For AT&T's smaller competitors, and for the sake of preserving rural competition, it is most efficient and cost effective to route AT&T traffic (which now comprises almost 75% of all CEA traffic over the last year) over the CEA network in order to lower (pursuant to Section 61.38) the non-distance-sensitive interstate CEA rate paid by all IXCs and their consumers for

[13] Ex. 65, Traffic Agreement by and between Great Lakes Communication Corp. and Iowa Network Services, Inc., dated July 1, 2005 (Aureon_00091, 00096).

access to the comprehensive, 2,700-mile CEA network – a network for which Aureon was required to incur the cost of fiber upgrades. To ensure Aureon's per minute CEA rate for the recovery of those additional costs remained economical for AT&T's smaller competitors and would foster rural competition, it was necessary to require AT&T to route its traffic over the CEA network and spread the cost recovery over access minutes for all IXCs, including AT&T's access minutes. Removal of AT&T's traffic from the CEA network would seriously harm rural consumers by endangering the economic viability and affordability of the CEA network, which has made the availability of advanced services and competition with AT&T feasible in rural Iowa. Furthermore, CEA service enables AT&T's smaller competitors to avoid payment of a distance-sensitive transport charge – regardless of whether an interstate call is transported 101 miles (i.e., the average distance on the CEA network) or 10 miles, without any increase in interstate transport charges due to longer rural distances. Accordingly, the CEA network in Iowa was designed to reduce the costs of competition in Iowa for AT&T's smaller competitors although it would also increase costs for AT&T. If the share of Aureon's revenue requirement paid by AT&T were to be significantly reduced, the resulting shortfall would have to be recovered from AT&T's competitors.

23. It is my understanding that in approving Aureon's CEA network, the Commission adopted a CEA mandatory use policy to ensure that sufficient traffic volume remained on the CEA network in order to maintain its affordability for AT&T's smaller competitors, and thereby stimulate rural competition.[14] The solution to the issues raised by AT&T is to enforce the CEA mandatory use policy rather than allowing further discriminatory bypass pricing to harm the smaller IXCs that are dependent upon the CEA common trunks to compete against AT&T in

[14] *See* Aureon Legal Analysis, Part I.

Iowa.[15] Because Section 63.18 of the Commission's rules requires the CEA rate to decrease as volume increases, eliminating the bypass that is violating the CEA mandatory use policy and moving that traffic onto the CEA network will result in a significant reduction in the CEA tariff rate – to the benefit of all IXCs and consumers. All IXCs and their customers will benefit from the lower CEA tariff rate that will result from the routing of all terminating traffic, including access stimulation traffic, over the CEA network.

24. In April 2017, Aureon proposed a contract tariff, which never became effective, that would have required the IXC to sign a separate contract containing terms, conditions, and rates that were "not like" the terms, conditions, and rates of the CEA tariff. Despite the different contractual terms, the functions, nature, and benefits of CEA service remained the same for both access stimulation terminating traffic and other terminating traffic. The proposed contract tariff stated: "Customer agrees to provisioning flexibility for Iowa Network and other terms that will result in the Customer receiving a switching and Transport service that is not like the centralized equal access service that is not subject to those additional terms and conditions."[16] Pursuant to discussions with the FCC's staff, Aureon subsequently deleted that "not like" language from the tariff, and replaced it with a volume discount plan that offers the same CEA service to both high-volume terminating traffic and low-volume terminating traffic.[17] As the tariffed volume discount plan, which became effective on May 20, 2017, expressly applies to both terminating traffic and a large traffic volume (25 million interstate minutes per month), those effective tariff regulations are

[15] *See* J. Schill Decl. ¶ 28 **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

[16] Ex. 54, INAD Tariff F.C.C. No. 1, § 7.1.1, Original Page 146.1.

[17] Ex. 55, INAD Tariff F.C.C. No. 1, § 7.1.1, 1st Revised Page 146.1.

additional evidence that CEA service and the CEA tariff apply to access stimulation terminating traffic.[18]

25. It is important to note that Aureon's contracts with wireless carriers involve a service that does not include all the functions available with CEA service. For example, when Aureon transports a call from a LEC's facilities to a wireless carrier's network, Aureon does not provide equal access functionality. The CEA rate required to make the comprehensive CEA network available with all its features and functions to all IXCs and on a non-discriminatory basis cannot be rationally compared to the limited service provided for land-to-mobile traffic or the point-to-point transport provided by third parties without all the CEA functions.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on June 26, 2017.

Frank Hilton

[18] Ex. 51, INAD Tariff F.C.C. No. 1, § 6.7.3, 2nd Revised Page 137.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
AT&T CORP.,	)	
	)	Docket No. 17-56
Complainant	)	
	)	Bureau ID No. EB-07-MD-001
vs.	)	
	)	
IOWA NETWORK SERVICES, INC., d/b/a AUREON NETWORK SERVICES	)	
	)	
Defendant.	)	
	)	

LEGAL ANALYSIS IN SUPPORT OF THE ANSWER OF IOWA NETWORK SERVICES, INC. d/b/a AUREON NETWORK SERVICES

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June 28, 2017

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IOWA NETWORK SERVICES, INC., d/b/a AUREON NETWORK SERVICES	)	
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LEGAL ANALYSIS IN SUPPORT OF THE ANSWER OF
IOWA NETWORK SERVICES, INC. d/b/a AUREON NETWORK SERVICES

Iowa Network Services, Inc., d/b/a Aureon Network Services ("Aureon") and pursuant to Section 1.724(c) of the rules of the Federal Communications Commission ("FCC," or the "Commission"), submits this Legal Analysis in support of Aureon's Answer to the Formal Complaint filed by AT&T Corp. ("AT&T") in the above-captioned proceeding.

I. The Justness and Reasonableness of the CEA Tariff Rate is being Undermined by AT&T's Violation of the FCC's Mandatory Use Requirement.

This proceeding comes before the FCC on referral from the U.S. District Court for the District of New Jersey to resolve issues raised in a lawsuit filed by Aureon against AT&T for AT&T's failure to pay Aureon's invoices for centralized equal access ("CEA") service provided since August 2013. This case is more than about AT&T's refusal to pay Aureon's lawful tariff rates. Rather, this case is about stopping AT&T from continuing to engage in fraudulent and unlawful conduct to bypass Aureon's CEA network, and removing billions of minutes annually from Aureon's CEA network. Specifically, AT&T has used misleading and even fraudulent means

to acquire direct connections with local exchange carriers ("LECs") that are connected to Aureon's network (the "subtending LECs"), even though the FCC and the Iowa Utilities Board ("IUB") have ordered AT&T to route terminating traffic over the CEA network in order to maintain an affordable CEA rate for AT&T's smaller competitors. AT&T's actions have resulted in significant increased costs to smaller competing interexchange carriers ("IXCs"), and threatens the entire competitive long distance market for rural Iowa.

As the Commission is aware, prior to Aureon's creation, long distance customers living in rural Iowa areas did not have the ability to choose their own long distance carriers due to the disparate types of equipment used among the various small, independent local exchange carriers ("LECs") serving rural communities. AT&T and Northwestern Bell Telephone Company ("NWB", now CenturyLink) were the only carriers that offered long distance service in rural Iowa.[1] Only AT&T offered interLATA long distance service,[2] and only NWB offered intraLATA long distance service[3] due to their monopoly over long distance facilities serving rural Iowa exchanges.

On February 29, 1988, the Commission granted Section 214 authorization to Aureon to build a fiber optic network to provide CEA service. The Commission concluded that the CEA network would "serve the public interest, convenience and necessity" by solving the problem of how to achieve competition with AT&T in small rural communities.[4] Aureon's CEA network

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[1] *Application of Iowa Network Access Division for Authority Pursuant to Section 214 of the Communications Act of 1934 and Section 63.01 of the Commission's rules and Regulations to Lease Transmission Facilities to Provide Access Service to Interexchange Carriers in the State of Iowa*, Memorandum Opinion, Order and Certificate, 3 FCC Rcd. 1468, 1471, ¶ 19 (1988) ("*FCC 214 Order*" , *aff'd on recon.*, 4 FCC Rcd. 2201 (1989) ("*FCC 214 Recon. Order*").

[2] *Id.* at 1468, ¶ 3.

[3] *Nw. Bell Tel. Co. v. Iowa Utils. Bd.*, 477 N.W.2d 678, 681 (Iowa 1991).

[4] *FCC 214 Order*, 3 FCC Rcd. at 1471, ¶¶ 21, 23.

makes it economical for AT&T's smaller competitors to provide service to rural Iowa by aggregating traffic for hundreds of rural LECs at Aureon's tandem switch in Des Moines, and centralizing the provisioning of expensive features and advanced functionalities. AT&T's smaller competitors "would find it an expensive task to provide their own facilities" to each of the rural LEC end offices subtending Aureon's tandem.[5]

In order to ensure that Aureon's tariff rate for CEA service remains affordable for AT&T's smaller competitors, the FCC imposed a mandatory terminating use requirement for all IXCs sending traffic to LECs connected to Aureon's network.[6] When the CEA network was initially proposed, AT&T did not need the CEA network, and would incur additional costs to route AT&T's traffic over the CEA network, because AT&T was already connected to all the LEC end offices in Iowa by the transport facilities provided by NWB. Finding that the CEA network would not be economically viable if it carried only the traffic of new market entrants, the Commission required AT&T to route its terminating traffic over the CEA network to the LECs' end offices connected to the CEA network. In making this ruling, the FCC stated as follows:

> All toll traffic, both inter- and intra-state, is to transit the Des Moines switch for ticketing and billing . . . In reaching its decision, the Bureau determined that INAD's [Iowa Network Access Division's] inclusion of a mandatory terminating use requirement for interstate traffic was not 'unreasonable [nor would differ] substantially from the normal way access is provided, as both an originating and terminating service'".[7]

[5] *Id.* at 1468, ¶ 3.

[6] As traffic volume decreases, the CEA per minute rate increases; and as traffic volume increases, the CEA per minute rate decreases.

[7] *FCC 214 Recon. Order*, 4 FCC Rcd. at 2201 ¶¶ 2, 3.

In the FCC's *Transport Rate Structure Order*, the FCC considered whether small rural LECs connected to a CEA network should be required to offer direct connections to IXCs.[8] In that proceeding, AT&T asserted that "IXCs should have the option of ordering either direct-trunked [i.e., direct connections] or tandem-switched transport [i.e., CEA service]. AT&T assert[ed] that this approach would give all LECs an incentive for efficiency . . . ."[9] The FCC rejected AT&T's argument, and stated that "the Commission has previously approved centralized equal access arrangements with mandatory termination requirements, . . . and we do not require centralized equal access providers or *LECs participating in such arrangements to offer direct-trunked transport service*.[10]

AT&T is fully aware that it is required to route traffic over the CEA network to subtending LECs.[11] AT&T has nonetheless engaged in a scheme utilizing strong-arm tactics to force subtending LECs into direct connections by withholding full payment unless they agree to a direct connection arrangement with AT&T that bypasses Aureon's CEA network. **[[BEGIN CONFIDENTIAL]]** [redacted]

[8] *See generally Transport Rate Structure and Pricing*, Report and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd. 7006 (1992) ("*Transport Rate Structure Order*").

[9] *Id.* at 7048-49, ¶ 89.

[10] *Id.* at 7049, ¶ 91 (emphasis added).

[11] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[redacted][12] **[[END CONFIDENTIAL]]**

[[BEGIN CONFIDENTIAL]] [redacted]

[redacted][13] **[[END CONFIDENTIAL]]**

AT&T disingenuously characterizes **[[BEGIN CONFIDENTIAL]]** [redacted]

[redacted][14] **[[END CONFIDENTIAL]]** AT&T's violation of the Commission's CEA mandatory use rule and AT&T's refusal to pay Aureon's lawful CEA tariff rate cause a higher CEA rate for smaller competitors in the long distance market, harm long distance competition, and, if not stopped, will ultimately result in accomplishing AT&T's goal of once again dominating the long distance market in rural Iowa.

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[12] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[13] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

[14] **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]**

II. As Dominant Carriers, CEA Providers Calculate Their Tariff Rates on the Basis of Traffic and Cost Studies Required by Section 61.38 Rather Than the Section 61.26 CLEC Rate Benchmark or the Section 51.909 ILEC Rate Caps.

Iowa Network Access Division ("INAD") is Aureon's operating division that provides CEA service.[15] AT&T's complaint alleges that INAD's tariff rates should have been based on rate caps in lieu of the traffic and costs studies upon which 47 C.F.R. § 61.38 requires dominant carriers to calculate their tariff rates. However, the FCC has only adopted rate caps for incumbent local exchange carriers ("ILECs") and competitive local exchange carriers ("CLECs") which the Commission has classified as non-dominant. AT&T's claim suffers from the incorrect assumption that the Commission must have classified INAD as either a non-dominant ILEC or a non-dominant CLEC. Instead, INAD is a centralized equal access provider, which the Commission has classified as a dominant carrier subject to Section 61.38.

It is the rate regulations in Section 61.38 that apply to a dominant carrier service like CEA, not the Section 61.26 CLEC benchmark and not the Section 51.909 ILEC rate caps. Section 61.38 applies to Aureon because Aureon is a dominant carrier "whose gross annual revenues exceed $500,000 for the most recent 12 month period of operations."[16] In granting certification under 47 U.S.C. § 214 for the operation of a CEA network, the Commission determined that "INAD is a dominant carrier providing exchange access services subject to Title II regulations and application requirements of Section 63.01."[17] While the Commission has classified ILECs and CLECs as non-dominant due to the rate caps adopted for those carriers, the Commission recently affirmed that "non-dominant status does not extend to centralized equal access providers because such carriers

[15] Declaration of Frank Hilton ¶ 3, attached hereto as Ex. B ("F. Hilton Decl.").

[16] 47 C.F.R. § 61.38(a).

[17] *FCC 214 Order*, 3 FCC Rcd. at 1470, ¶ 10.

do not provide service to end users."[18] The rate caps were the sole reason the Commission reclassified ILECs as non-dominant.

> We also decline to engage in a more rigorous examination of traditional market power factors . . . We make no such assessment today. Rather, we find that the Commission's intercarrier compensation reforms have restructured the market for interstate switched access services in a manner that divests incumbent LECs of market power over these services.[19]

Had the Commission intended to apply the CLEC rate benchmark or ILEC rate caps to CEA providers, the Commission would have also reclassified CEA providers as non-dominant, which the Commission clearly did not do.

AT&T argues that, since the *USF/ICC Transformation Order* adopted rate caps for ILECs and CLECs, that a centralized equal access provider must be classified as either an ILEC or CLEC. In AT&T's view, the rate caps apply to a centralized equal access provider based on AT&T's contention that a centralized equal access provider is either a CLEC or an ILEC. However, no reasonable reading of the Commission's regulations together can lead to this conclusion, for AT&T's view renders the Commission's dominant carrier classification for CEA and 47 C.F.R. § 61.38 superfluous.

In determining the rate regulations applicable to CEA providers, the Commission should give effect to the overall regulatory scheme, which applies different rate regulations depending upon whether the Commission has classified a carrier as dominant or non-dominant.[20] *Richman*

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[18] *Technology Transitions*, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd. 8283, 8290 n. 43 (2016).

[19] *Id*. at 8294, ¶ 32.

[20] *FDA. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) ("It is a 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.' A court must therefore interpret the statute 'as a symmetrical and coherent regulatory scheme,' and 'fit, if possible, all parts into a harmonious

Bros. Records, Inc. v. U.S. Sprint Commc'ns Co., 953 F.2d 1431, 1436 (3d Cir. 1991) (recognizing that the Commission "divided common carriers into two groups: dominant and non-dominant"). The Commission's rate regulations for dominant carriers like Aureon are contained in a separate subpart of the Commission's rules from the subpart containing the rate regulations for non-dominant carriers and the CLEC rate benchmark rule. Compare, for example, Sections 61.38, which is contained in the subpart entitled "General Rules for Dominant Carriers," to Section 61.26, which is contained in the subpart entitled "General Rules for Nondominant Carriers."[21] The CLEC rate benchmark in Sections 51.911 and 61.26 and the ILEC rate caps in Section 51.909, which only apply to non-dominant carriers, cannot rationally be construed as applying to CEA providers, which are dominant carriers.

Section 61.38 "applies to dominant carriers whose gross annual revenues exceed $500,000 for the most recent 12 month period of operations or are estimated to exceed $500,000 for a representative 12 month period."[22] In order to make a tariff change, Section 61.38 requires dominant carriers to file with the Commission: (1) "A cost of service study for all elements for the most recent 12 month period;" (2) "A study containing a projection of costs for a representative 12 month period;" and (3) "[T]he projected effects on the traffic and revenues for the same representative 12 month period."[23] When the Commission adopted rate caps for non-dominant ILECs and CLECs, the Commission retained the Section 61.38 rate regulations for dominant carriers.

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whole'" (citations omitted)). Such canons of statutory construction apply when interpreting the Commission's rules. *Harris v. Norfolk S. Ry. Co.*, 784 F.3d 954, 962 (4th Cir. 2015).

[21] Inspecting the titles of regulations is a well-accepting method of interpretation. *First Bank & Trust Co. of Princeton, Ky. v. Feuquay*, 405 F.2d 990, 993 (6th Cir. 1969).

[22] 47 C.F.R. § 61.38(a).

[23] *Id.* at § 61.38(b)(1).

As a dominant carrier "whose gross annual revenues exceed $500,000 for the most recent 12 month period of operations,"[24] Section 61.38 applies to INAD. When INAD filed its original CEA tariff, the Commission directed INAD to file cost and traffic studies in accordance with Section 61.38. "INS has been requested by the FCC's staff to prepare and provide a cost study in support of its Tariff F.C.C. No. 1 issued on August 10, 1988."[25] INAD's tariff filing providing the cost study requested by the Commission noted that "[r]evised supporting information required by Section 61.38 of the Commission's Rules is attached."[26] AT&T filed a petition to suspend and investigate the tariff alleging that "INAD has based its proposed rates on inadequate cost support." *Iowa Network Access Division; Tariff F.C.C. No. 1 Transmittal Nos. 1, 6, and 10*, Order, 4 FCC Rcd. 3947, 3947, ¶ 4 (1989) ("*1988 INAD Tariff Order*"). After an extensive eight month review of INAD's tariff and cost support, the Commission denied AT&T's petition and allowed INAD's tariff to become effective. "On April 14, INAD filed Transmittal No. 10, which revised its cost data to better conform with Commission Rules . . . We find no compelling argument has been presented that the tariff filed by INAD is patently unlawful so as to require rejection or that the tariff warrants investigation at this time." *Id.* at 3947-48, ¶¶ 9-10.

Every two years, INAD has subsequently filed with the Commission cost and traffic studies as required by Section 61.38.[27] According to the most recent Section 61.38 traffic and cost studies, CEA service had a return on interstate investment of negative 343.36% during the year 2015.[28]

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[24] *Id.* at 61.38(a).

[25] Ex. 8, Aureon's 1989 Tariff Filing (filed Apr. 14, 1989), Description and Justification at 1.

[26] *Id.* Cover Letter at 1.

[27] F. Hilton Decl. ¶¶ 18-19.

[28] Ex. 15, Aureon's 2016 Tariff Filing (filed June 16, 2016), Introduction, Overview and Rate Development at 2.

For the projected twelve month period, July 1, 2016 to June 30, 2017, the current CEA tariff rate will result in a negative 171.69% rate of return.[29] The rate caps that AT&T is trying to impose on CEA providers would seriously worsen INAD's under-earnings.

AT&T proffers an implied repeal of the Section 61.38 calculation of CEA tariff rates and the CEA regulatory regime in effect for nearly three decades. If Section 61.38 does not apply to CEA service providers, it would not apply to anybody, be rendered a nullity, and be entirely superfluous. With the reclassification of ILECs as non-dominant, CEA service providers are the only dominant carriers that still calculate their tariff rates pursuant to Section 61.38. However, repeals by implication are not favored. *Nw. Forest Res. Council v. Pilchuck Audubon Soc.*, 97 F.3d 1161, 1166-1167 (9th Cir. 1996) (holding that an implied repeal "may be found only if no other construction is possible"). Such abandonment of Section 61.38 and the Commission's previously articulated policies for centralized equal access service would require some expression by the Commission that such a result is intended. *Id.* at 1166 ("Such an implied repeal must be based on 'clear and manifest' intent." (citing *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 154 (1970))). An examination of the Commission's regulatory scheme indicates quite clearly that the Commission had no such intent.

A. CEA Providers Are Not Regulated as CLECs Because They Have Always Been Regulated as Dominant Carriers.

CEA providers are not CLECs, have never been regulated as CLECs, and are not subject to the CLEC rate caps and rate benchmark in Sections 51.911 and 61.26. The Commission should construe the scope of its CLEC rate regulations in light of the common understanding of what a CLEC is and the Commission's long-standing historical practice of regulating CEA providers

[29] *Id.*

differently than CLECs.[30] It is commonly understood that CEA providers are not CLECs, and given the Commission's classification of CEA providers as dominant carriers, that common understanding is eminently reasonable. For more than fifteen years, the Commission has applied a benchmarking rule that permits CLECs to charge interstate access tariff rates at a level no higher than the tariff rate of the ILEC serving the same geographic area.[31] During the many years that the benchmarking rule has applied to CLECs, it has not applied to Aureon, which has consistently utilized cost and traffic data to set and revise its CEA tariff rates in accordance with Section 61.38. Unlike the cost support that the Commission has always required of CEA providers, since their inception nearly thirty years ago, the Commission "specifically disclaimed reliance on cost to set competitive LEC access rates." *Access Charge Reform, et al.*, Order, 23 FCC Rcd. 2556, 2560, ¶ 13 (2008). Therefore, given the historical inapplicability of the CLEC rate benchmark to CEA providers, Aureon is not a CLEC and the CEA tariff rates are not regulated by the Commission's rules for CLECs.

The CLEC rate caps and rate benchmark in Sections 51.911 and 61.26 are also inapplicable to CEA tariff rates due to the context in which those rules were adopted and the consequences of applying those CLEC rules to CEA providers. The Commission's adoption of the CLEC rate benchmark presupposed that a CLEC could offset the reduction in revenue from IXCs by increasing rates charged end users. "Competitive LECs are free to recover reduced revenues through end-user charges." *Connect America Fund, et al.*, Report and Order and Further Notice

[30] *Morton v. Mancari*, 417 U.S. 535, 550 (1974) (rejecting "formalistic reasoning that ignores . . . history"); *First Bank & Trust Co. of Princeton, Ky.*, 405 F.2d at 992 (applying the common understanding of "motor vehicle" to exclude airplanes even though an airplane is a vehicle with a motor).

[31] *Access Charge Reform*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923, 9925, ¶ 3 (2001).

of Proposed Rulemaking, 26 FCC Rcd. 17663, 17957, ¶ 850 (2011) ("*USF/ICC Transformation Order*"). "Competitive LECs . . . may recover reduced intercarrier revenues through end-user charges." *Id*. at 17961, ¶ 852. However, CEA providers do not provide CEA service to end users from whom they could recover reduced intercarrier revenue through an increase in end user charges.[32] CEA service also does not receive money from either the Connect America Fund or the Universal Service Fund that could lessen the resulting shortfall in cost recovery.[33] Given the absence of any other cost recovery mechanism, imposing the CLEC rate benchmark upon CEA service would threaten the financial viability of the CEA network and put in jeopardy the greater consumer choice of long distance services and advanced technologies that CEA has made available in rural Iowa.

AT&T alleges that the Commission has classified all non-ILECs as CLECs, relying upon a general definition in Section 51.903(a) (defining a CLEC as "any local exchange carrier . . . that is not an incumbent local exchange carrier").[34] However, it is clear from a review of the Commission's specific, detailed decisions and rules that the Commission has not classified all non-ILECs as CLECs. Rather, the Commission has only classified as CLECs those non-ILECs that are non-dominant. The Commission defined all CLECs as non-dominant after applying its long-standing policy "that a carrier is non-dominant unless the Commission makes or has made a finding that it is dominant."[35] Furthermore, only for CLECs did the Commission conclude that "non-

[32] F. Hilton Decl. ¶ 4.

[33] *Id.*

[34] 47 C.F.R. § 51.903(a).

[35] *Access Charge Reform, et al.*, First Report and Order, 12 FCC Rcd. 15982, 16138, ¶ 358 (1997) ("*Access Charge Reform Order*"), *aff'd sub nom, Sw. Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998).

incumbent LECs should be treated as non-dominant."[36] Unlike CLECs, the Commission has expressly classified CEA providers as dominant. Therefore, while being a non-ILEC, a CEA provider is not a CLEC because CEA providers have been classified by the Commission as dominant carriers.

In construing the Section 51.903(a) general definition of a CLEC, the Commission should harmonize that catch-all with the detailed Section 61.38 rate regulations that specifically apply to dominant carriers like Aureon. When two agency rules conflict, "the specific governs the general." *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 170 (2007). In adopting Section 51.903(a), the Commission retained the Section 61.38 rate regulations for dominant carriers. The Section 51.903(a) CLEC definition is a gross generality, while Section 61.38 is a specific rule that applies to "dominant carriers whose gross annual revenues exceed $500,000 for the most recent 12 month period of operations or are estimated to exceed $500,000 for a representative 12 month period."[37] It is prudent to assume that the Commission would not use vague terms or ancillary provisions like the Section 51.903(a) CLEC definition to alter the fundamental details of dominant carrier regulation under Section 61.38.[38] Therefore, the specific provisions of Section 61.38 should govern rather than the general CLEC definition contained in Section 51.903(a).

The Commission's rules are readily harmonized. The Section 51.903(a) catch-all CLEC definition is limited to LECs that are non-dominant. The Section 51.903(a) general CLEC definition only applies "[f]or the purposes of this subpart [subpart J of Part 51]." By contrast,

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[36] *Id.* at 16140, ¶ 360.

[37] 47 C.F.R. § 61.38(a).

[38] *Owner-Operator Indep. Drivers Ass'n, Inc. v. U.S. Dep't of Transp.*, 840 F.3d 879, 889 (7th Cir. 2016) (applying a rule of construction so as to "not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions" or, more colloquially, to "not hide elephants in mouseholes").

Section 61.31 states that "[t]he rules in this subpart [subpart E of part 61] apply to all dominant carriers."[39] Part 51 does not contain a definition of "dominant carrier," but Part 61 does. Section 61.3(q) defines a "dominant carrier" as "a carrier found by the Commission to have market power (i.e., power to control prices)."[40] The Commission has determined that CEA providers meet the definition of dominant carrier, but that CLECs do not. The Commission has specifically concluded that "[t]here is no indication in the record that competitive LECs have exercised any degree of market power in provision of terminating access or other access services. By definition, non-dominant carriers do not exercise market power."[41] In order to maintain a coherent regulatory scheme, the general Part 51 CLEC definition must give way to Section 61.38's specific terms and exclude regulating dominant carriers like Aureon as CLECs.

B. CEA Providers Are Not Regulated as ILECs.

The rate regulations for ILECs also have not replaced the application of Section 61.38 to CEA tariff rates. CEA providers are not ILECs, and the Commission does not regulate CEA providers as ILECs. The Commission has not directly or indirectly applied the ILEC rate caps to CEA service. As discussed above, the CLEC rate benchmark, which indirectly applies the ILEC rate caps to CLECs, is inapplicable to CEA providers.[42] The Commission's rules also do not *directly* apply the ILEC rate caps in Section 51.909 to CEA providers because CEA providers are not ILECs. The ILEC rate caps apply to "Rate-of-Return Carriers", which Section 51.903(g) specifically defines as ILECs. 47 C.F.R. § 51.903(g). Aureon does not satisfy either of the two

[39] 47 C.F.R. § 61.31.

[40] *Id.* at § 61.3(q).

[41] *Access Charge Reform Order*, 12 FCC Rcd. at 16153, ¶ 396.

[42] "Consistent with the general benchmarking rule that had been used for interstate access service, competitive LECs will benchmark to the default rates of the incumbent LEC in the area they serve." *USF/ICC Transformation Order*, 26 FCC Rcd. at 17967, ¶ 866.

statutory prerequisites for being an ILEC. Aureon is not a National Exchange Carrier Association ("NECA") member, and CEA service does not involve the provision of local service to end user customers.[43] 47 U.S.C. §251(h). Therefore, Aureon is not an ILEC subject to the Section 51.909 ILEC rate caps.

C. The Commission Did Not Cap CEA Tariff Rates.

The Commission capped the rates of CLECs and ILECs in order to implement for those non-dominant carriers different rate regulations than the Section 61.38 requirements that remain applicable to CEA providers. In order to transition ILECs and CLECs to bill-and-keep, the Commission established rules capping and phasing-down rates for terminating access service. *USF/ICC Transformation Order*, 26 FCC Rcd. at 17905, ¶ 739. "Under bill-and-keep, carriers look first to their subscribers to cover the costs of the network, then to explicit universal service support where necessary." *Id.* at 17676, ¶ 34. "[C]arriers should first look to limited recovery from their own end users, consistent with the principle of bill and keep." *Id.* at 17957, ¶ 849. In affirming the Commission's *USF/ICC Transformation Order*, the U.S. Court of Appeals for the Tenth Circuit also noted that "'Bill-and-keep' anticipates that carriers will recover their costs from their end-user customers." *In re FCC 11-161*, 753 F.3d 1015, 1113 (10th Cir. 2014). As the terminating access rates of ILECs and CLECs phase out, "carriers will recover their network costs from end-users and the Universal Service Fund." *Id.* at 1132. "The FCC found that bill-and-keep is just and reasonable under § 252 (d)(2) because it allows carriers to recover their transport and termination costs from their end-users." *Id.* at 1125. The Commission determined that the rate caps for ILECs complied with constitutionally-required minimum recovery because "the recovery of Eligible Recovery from the ARC and CAF allow incumbent LECs to earn a reasonable return

[43] F. Hilton Decl. ¶¶ 3, 16.

on investment." *USF/ICC Transformation Order*, 26 FCC Rcd. at 17997, ¶ 924. The Tenth Circuit affirmed the Commission's rate caps because "the FCC has found that carriers can offset lost revenue by increasing charges on end-users." *In re FCC 11-161*, 753 F.3d at 1130. However, the Commission did not cap CEA tariff rates because, as the Commission recently affirmed, "such carriers do not provide service to end users." *Technology Transitions*, 31 FCC Rcd. at n. 43.

As a pre-existing special rule and exception, Section 61.38 ensures there is sufficient compensation to keep CEA service financially viable, as rates adjust to changes in CEA traffic volume and costs. Furthermore, by continuing (as Section 61.38 always has) to restrict the level of CEA tariff rates, Section 61.38 ensures that CEA rates remain just and reasonable. As traffic volume increases, Section 61.38 requires reductions in the CEA tariff rate. Section 61.38 expressly requires the CEA tariff rate to be calculated on the basis of "[t]he projected effects on the traffic and revenues."[44] Consequently, Aureon's interstate CEA tariff rate already reflects anticipated increases in traffic volume, including access stimulation traffic by carriers other than Aureon. By contrast, rates that are capped and fixed do not vary with increases in traffic volume.

Even though a CEA provider is neither an ILEC nor a CLEC, AT&T contends that the LEC rate caps and rate parity rules apply to a CEA provider due to the general definitions of LEC and telecommunications carrier found in 47 C.F.R. §§ 51.5 and 51.901(b) and 47 U.S.C. § 153(32). AT&T also alleges that, since CEA is an interstate switched access service, that the *USF/ICC Transformation Order* capped CEA tariff rates. Found among hundreds of pages of the *USF/ICC Transformation Order*, AT&T places heavy weight on a single, general statement that "all interstate switched access and reciprocal compensation rates will be capped."[45] However, these

[44] 47 C.F.R. § 61.38(b)(1).

[45] *USF/ICC Transformation Order*, 26 FCC Rcd. at 17934, ¶ 801.

definitions and words of inordinately general connotation were made more specific when the Commission codified Section 51.909(a), which only capped ILEC rates, and Section 51.911(a), which only capped CLEC rates.[46] Furthermore, as a cardinal rule, regulations dealing with a narrow, precise, and specific subject, such as the dominant carrier rate regulations in Section 61.38, are not submerged by regulations covering a more generalized spectrum. *United States v. American Trucking Ass'ns, Inc.*, 310 U.S. 534, 544 (1940) ("A few words of general connotation . . . should not be given a wide meaning"); *Morton*, 417 U.S. at 550 ("a specific statute will not be controlled or nullified by a general one"). In applying the specific Section 61.38 rule for dominant carriers and the specific rules for non-dominant carriers in Sections 51.909(a) and 51.911(a), the isolated snippet that AT&T selectively extracted from the *USF/ICC Transformation Order* and the general definitions of LEC and telecommunications carrier should not be given a wide meaning.

Instead, the specific Section 61.38 dominant carrier rate regulations should be construed as an exception to such a general connotation.

> [W]here there are two statutes, the earlier special and the later general, – the terms of the general broad enough to include the matter provided for in the special, – the fact that the one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, and the general will not be understood as repealing the special.[47]

Section 61.38 is a special rule that expressly addresses the regulation of dominant carrier tariff rates, that rule was adopted prior to the Section 51.5 general LEC definition and the *USF/ICC Transformation Order* upon which AT&T relies, and the Commission has never explicitly repealed Section 61.38. Moreover, while capping the rates of non-dominant CLECs and ILECs, the Commission expressly recognized that there would be exceptions. Under the title,

[46] 47 C.F.R. §§ 51.909(a) and 51.911(a).

[47] *Rogers v. United States*, 185 U.S. 83, 87-88 (1902); *see also Radlax Gateway Hotel, LLC v. Amalgamated Bank*, 132 S.Ct. 2065, 2071 (2012).

"Implementation," Section 51.905(c) states: "Nothing in this section shall be construed to require a carrier to file or maintain a tariff or to amend an existing tariff if it is not otherwise required to do so under applicable law."[48] Therefore, Section 51.905(c) mandates changes to CEA tariff rates only when required by Section 61.38 because CEA providers are neither non-dominant CLECs nor ILECs. Section 51.911(a) does not require CEA tariff rates to be capped because CEA providers are not CLECs; and Section 51.909(a) does not require CEA tariff rates to be capped because CEA providers are not ILECs.

The inapplicability of the rate caps to CEA is all the more compelling in light of the explicit references to "centralized equal access providers" contained in other parts of the Commission's rules. There is not a single reference to "centralized equal access provider" in the *USF/ICC Transformation Order* or the Part 51 rules adopted by that decision. There is no provision in Part 51 like there is in the Section 69.112 access charge rate regulations, which explicitly refers to "centralized equal access providers."[49] When the Commission intends to specify what tariff rates must be charged by CEA providers, the Commission knows how to do so. In contrast, neither the *USF/ICC Transformation Order* nor Part 51 of the Commission's rules discuss the regulation of CEA tariff rates. Consistent with long-standing canons, when the Commission includes particular language in one section of its rules related to access charges but omits such language in another section that also addresses access charges, it is generally presumed that the Commission acted intentionally to exclude such language.[50] The intentional exclusion of the term "centralized equal access provider" from both the *USF/ICC Transformation Order* and Part 51 of the Commission's

[48] 47 C.F.R. § 51.905(c).

[49] Section 69.112 defines the scope of access tariff rates that must be billed by centralized equal access providers. 47 C.F.R. § 69.112.

[50] *Tasker v. DHL Ret. Sav. Plan*, 621 F.3d 34, 42 (1st Cir. 2010).

rules, and the retention of Section 61.38 and the dominant carrier classification for CEA providers, leads to the inescapable conclusion that Section 61.38 continues to apply to CEA providers, and the rate caps for CLECs and ILECs do not.

III. Aureon Provided CEA Service, as Defined in the CEA Tariffs, to AT&T for All Traffic Billed to AT&T.

All common carriers providing telecommunications services, including AT&T and Aureon, have a statutory duty to establish a physical connection with other telecommunications service providers, and "to establish through routes and charges applicable thereto and the divisions of such charges." 47 U.S.C. § 201(a). The CEA network provides a "through route" between the long distance telephone networks of IXCs (e.g., AT&T), and the networks of other carriers (e.g., CLECs and ILECs) providing local telephone service.[51] The Commission authorized construction of the CEA "through route" to "speed the availability of high quality varied competitive services to small towns and rural areas." *FCC 214 Order*, 3 FCC Rcd. at 1468, ¶ 4, and 1474, ¶ 38.

After conducting a Section 201(a) hearing, the Commission prescribed a "division of charges" for through routes like the one that Aureon provided AT&T. Under this arrangement, AT&T offers its long distance service to the public for a fee, collects revenue from the customers that place calls, and pays a charge to connecting carriers, such as Aureon, for the use of Aureon's facilities. As the Commission explained, "one of the carriers offers the service to the public and pays a charge to a connecting carrier for the use of the other carrier's facilities. We have used the term 'carrier's carrier' charges to describe such an arrangement." *MTS and WATS Market Structure*, Third Report and Order, 93 F.C.C.2d 241, 254 n. 15 (1983). *See also Mobile Marine Radio, Inc. v. S. Cent. Bell Tel. Co.*, Memorandum Opinion and Order, 63 F.C.C.2d 266, 271 n. 21

[51] F. Hilton Decl. ¶ 8.

(1977). Aureon's tariff rates are the "carrier's carrier charges" that Section 201(a) requires AT&T to pay Aureon for AT&T's use of Aureon's through route.[52] AT&T has received, and continues to receive, payments from end users that placed calls that were routed over Aureon's through route. As an intermediate connecting carrier transmitting calls between AT&T's network and the facilities of third party LECs, Aureon does not receive any revenue directly from end users for the CEA service that Aureon provides over the through route with AT&T.[53]

Although AT&T routed its customers' calls over the CEA through route,[54] AT&T claims that Aureon did not provide CEA service. Prior to routing calls over the CEA through route, the tariffs require IXCs to place orders for CEA service by sending access service requests ("ASRs") to Aureon.[55] AT&T ordered CEA service from Aureon by sending ASRs to Aureon.[56] In response to those ASRs, Aureon sent AT&T several confirmations.[57] As requested by AT&T's ASRs, Aureon provided CEA service with the capacity to carry the volume of traffic that AT&T routed

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[52] Instead of a joint rate that AT&T and Aureon would bill end users, the Commission implemented Section 201 (a) by requiring AT&T to pay access charges to other connecting carriers (like Aureon) that provide a "though route" for the completion of AT&T's customers' calls. "[T]he language and history of Section 201(a) demonstrate that Congress used the term 'divisions" in that particular provision to encompass any arrangement for the compensation of carriers that participate in a through service . . . This through rate is not necessarily a 'joint' rate. It may be merely an aggregation of separate rates fixed independently." *MTS and WATS Market Structure*, 93 F.C.C.2d at 255, ¶ 40 and n. 16. *See also* F. Hilton Decl. ¶¶ 3, 8.

[53] F. Hilton Decl. ¶¶ 4, 8; *see also* Ex. 47, INAD Tariff F.C.C. No. 1, § 6.1, 4th Revised Page 88 (AT&T has an obligation to compensate Aureon for AT&T's use of Aureon's network regardless of how the service is labeled. Aureon's tariff states that "[a]ny entity delivering non-access service traffic to INS must either negotiate an interconnection agreement with INS or pay the rates and charges set forth in 6.8 following.").

[54] F. Hilton Decl. ¶¶ 5, 8.

[55] Ex. 45, INAD Tariff F.C.C. No. 1, § 5.1.1, 1st Revised Page 69.

[56] F. Hilton Decl. ¶ 11.

[57] *Id.*

over the CEA network and for which Aureon has billed AT&T.[58] Aureon rendered performance in compliance with the CEA tariffs and AT&T's ASRs.[59]

AT&T's argument that Aureon did not provide CEA service is contrary to the filed tariffs, which clearly state that CEA service:

> [P]rovides a two-point electrical communications path between a point of interconnection with the transmission facilities of an Exchange Telephone Company at a location listed in Section 8 following and Iowa Network's central access tandem where the Customer's traffic is switched to originate or terminate its communications. It also provides for the switching facilities at Iowa Network's central access tandem.[60]

When AT&T routed calls via Aureon's facilities, the only route that those calls could take include: (1) switching at Aureon's central access tandem and (2) the electrical communications path between Aureon's central access tandem and the networks of the LECs that chose to connect with the CEA network.[61] Because these two elements satisfy the tariff's definition of CEA service and were provided with the service that AT&T received from Aureon, the service that was provided and billed to AT&T was CEA service as defined in the tariffs.

AT&T's allegation that CEA service is inapplicable to terminating traffic routed to CLECs also disregards the tariffs' terms and the broad scope of Aureon's state and federal authorizations to provide CEA service. The CEA tariffs describe the primary functions of CEA service as the transport and switching of traffic between an IXC's network and the facilities of an "Exchange Telephone Company." INAD Tariff F.C.C. No. 1, § 6.1, 4th Revised Page 88 (Ex. 47). The CEA tariffs define "Exchange Telephone Company" broadly to include both CLECs and ILECs.

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[58] *Id.*

[59] *Id.*

[60] Ex. 47, INAD Tariff F.C.C. No. 1, § 6.1, 4th Revised Page 88.

[61] F. Hilton Decl. ¶ 9.

> The term 'Exchange Telephone Company' denotes a carrier that provides service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange and which is covered by the exchange service charge.[62]

Section 9 of the CEA tariff lists the name of each "Exchange Telephone Company" that has chosen to home its traffic on the CEA access tandems. Several CLECs are listed in the CEA tariff, and Aureon has been providing IXCs with CEA service to the exchanges of those CLECs for several years.[63] Therefore, by their express terms, the CEA tariffs authorize Aureon to provide CEA service to IXCs for traffic associated with CLECs.

The tariffs also define CEA service as including transport and switching for both originating and terminating traffic. In addition to equal access for originating traffic, CEA service also enables smaller IXCs competing with AT&T to connect at a single location in order to terminate their customers' calls to all the exchanges of more than 200 LECs listed in the CEA tariff.[64] The tariff expressly states that CEA service "provides a concentration and distribution function for originating *and* terminating traffic."[65] If CEA service did not transport terminating traffic to CLECs, smaller IXCs would have to build or lease facilities to each of the end offices of those CLECs. In the Commission's words, this would be "an expensive task."[66] The aggregation of terminating traffic on the CEA network has helped foster long distance competition by making it economical for AT&T's smaller competitors to provide service to rural Iowa. CEA service has

[62] Ex. 44, INAD Tariff F.C.C. No. 1, § 2.6, 1st Revised Page 56.

[63] F. Hilton Decl. ¶ 6.

[64] *Id.* ¶¶ 3, 6.

[65] Ex. 47, INAD Tariff F.C.C. No. 1, § 6.1, 4th Revised Page 88 (emphasis added).

[66] *FCC 214 Order*, 3 FCC Rcd. at 1468, ¶ 3.

succeeded in making it attractive for fifteen IXCs to use the CEA network to originate traffic and for seventeen IXCs to use the CEA network to terminate traffic.[67]

Another goal in authorizing CEA service for terminating traffic was to ensure an affordable CEA tariff rate for smaller IXCs competing with AT&T. If all the costs of the CEA network were recovered from only originating minutes-of-use, the per-minute CEA tariff rate would increase and become unaffordable for AT&T's smaller competitors. *Nw. Bell Tel. Co.*, 477 N.W.2d at 684 ("unless INS provided terminating access as well as originating access, all the costs of operating the network would have to be recovered in the provision of originating access only. Such a result would frustrate one of the main goals of the INS system since the higher costs, which would be passed along to the interexchange utilities, would deter the entry of competition"). Omitting terminating minutes-of-use of any kind from the Section 61.38 rate calculation would cause a corresponding increase in the CEA tariff rate. Therefore, in order to maintain an affordable CEA tariff rate, the Commission adopted a mandatory termination requirement. *FCC 214 Order*, 3 FCC Rcd. at 1473, ¶ 33 ("We do not believe that the mandatory termination requirement for interstate traffic is unreasonable . . . Given the expected benefits of the network . . . the requirement that terminating interstate traffic transit the Des Moines switch does not appear to be unlawful or unreasonable"); *FCC 214 Recon. Order*, 4 FCC Rcd. at 2201, ¶¶ 2, 3 ("In reaching its decision, the Bureau determined that INAD's [Iowa Network Access Division's] inclusion of a mandatory terminating use requirement for interstate traffic was not 'unreasonable [nor would differ] substantially from the normal way access is provided, as both an originating and terminating service'").

[67] F. Hilton Decl. ¶ 3.

CEA service was authorized for all types of terminating traffic that an IXC routes over the CEA network. The Commission did not exempt from the calculation of the CEA tariff rate, conferencing calling, access stimulation traffic of other carriers, or any other type of terminating traffic that an IXC routes to the CEA network. When calculating the CEA tariff rates, Section 61.38 of the Commission's rules does not exclude the access stimulation traffic of other carriers from the rate calculations, but instead requires the CEA tariff rate to be calculated by dividing the regulated revenue requirement by *all* minutes-of-use, including third party access stimulation traffic that an IXC sends over the CEA network. Furthermore, in approving the construction of the CEA network, the Commission and the Iowa Utilities Board required Aureon to provide CEA service for all terminating traffic. The Commission conditioned Aureon's Section 214 certificate upon the Iowa Utilities Board's decision, which ruled that "[p]ursuant to their participation agreements with INS [Aureon], the [participating telephone companies] PTCs will be allowed to require at their option that *all* terminating traffic be routed over the INS network and INS will be allowed to charge its CEA rate for *all* such terminating traffic."[68] After those initial decisions approving the CEA network, the Telecommunications Act of 1996 added 47 U.S.C. § 251(a)(1), requiring Aureon to connect with both CLECs and ILECs for both originating and terminating traffic. It clearly would be unlawful for Aureon to block an IXC from sending terminating access stimulation traffic over the CEA network to a CLEC's end office. *Global Crossing Telecomms., Inc. v. Metrophones Telecomms., Inc*., 550 U.S. 45, 55, 63 (2007) (holding that a carrier's failure to comply with the obligations of multiple entities involved in the carriage of a long distance call

[68] Ex. 29, *Iowa Network Access Division*, Order Granting Rehearing for the Limited Purpose of Modification and Clarification and Denying Intervention, Docket No. RPU-88-2, 1988 Iowa PUC Lexis 1, slip op. at 5 (IUB Dec. 7, 1988) (emphasis added).

is unlawful). Aureon is clearly authorized to provide CEA service for all terminating traffic, including CLEC access stimulation traffic that an IXC routes over the CEA network.

Broadly construing the scope of CEA service furthers the public policies that CEA service was designed to achieve. The purpose of CEA service is not restricted to equal access functionality, long distance competition, or originating traffic. The FCC granted Aureon broad Section 214 authority to provide CEA service to further "the important Commission goal of making available more competitive, varied, high quality interstate services."[69] In affirming approval of the CEA network, the courts recognized that the benefits of CEA service would not be limited to equal access. *Nw. Bell Tel. Co.*, 477 N.W.2d at 681 (noting that "the network will also offer 'modern information systems'"). Consistent with the broad scope of CEA service, as defined in the filed tariffs, the Commission should find that Aureon provided CEA service to AT&T for all traffic that AT&T routed over the CEA network.

IV. Aureon is not Engaged in Access Stimulation Because Aureon is not a LEC, nor is a Party to an Access Revenue Sharing Agreement.

AT&T wrongly accuses Aureon of access stimulation. The Commission's access stimulation rules only apply to LECs that provide service to end users, not to CEA providers like Aureon which have no end users. Section 61.3(bbb) of the Commission's rules clearly states that "access stimulation" is only applicable to either a "rate-of-return local exchange carrier or a Competitive Local Exchange Carrier."[70] Other types of carriers, such as CEA providers, IXCs, etc., do not fall within the scope of the rule. Because, as discussed *supra*, a CEA provider is neither an ILEC nor a CLEC, the Commission's access stimulation rules do not apply to Aureon.

[69] *FCC 214 Order*, 3 FCC Rcd. at 1474, ¶ 38.

[70] 47 C.F.R. § 61.3(bbb).

Even if, *arguendo*, the access stimulation rules did apply to carriers that are not LECs, Aureon is not involved in access stimulation as defined by those rules.

> 'Access stimulation' occurs when a 'LEC has entered into an access revenue sharing agreement' and 'the LEC either has had a three-to-one interstate terminating-to-originating traffic ratio in a calendar month, or has had a greater than 100 percent increase in interstate originating and/or terminating switched access MOU in a month compared to the same month in the preceding year.'[71]

Furthermore, the Commission's rules require evidence that the LEC made "a net payment to the other party" to the access revenue sharing agreement. 47 C.F.R. § 61.3(bbb)(i). However, Aureon is not a party to an access revenue sharing agreement.[72]

AT&T argues that there is a presumption of access stimulation when the three-to-one interstate terminating-to-originating traffic ratio is met. However, the Commission made that presumption rebuttable if a carrier's officer certifies that the carrier "has not been, or is no longer engaged in access revenue sharing."[73] Aureon has rebutted any presumption that Aureon is involved in access stimulation by providing AT&T with a sworn affidavit from an Aureon officer attesting that Aureon is not a party to any access revenue sharing agreement.[74] AT&T's sole reliance upon the traffic ratio ignores the second condition in the definition of "access stimulation," that there be an access revenue sharing agreement with a net payment. As Aureon is not a party to an access revenue sharing agreement, and has not made a net payment to anybody pursuant to

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[71] *In re FCC 11-161*, 753 F.3d at 1145 (quoting *USF/ICC Transformation Order*, 26 FCC Rcd. at 17877, ¶ 667).

[72] F. Hilton Decl. ¶ 15.

[73] *USF/ICC Transformation Order*, 26 FCC Rcd. at 17889, ¶ 699.

[74] Ex. 25, Frank Hilton Declaration at ¶ 12, INS' Reply to AT&T's Opposition to Motion for Summary Judgment on Tariff Claims, *Iowa Network Services, Inc. v. AT&T Corp.*, No. 14-3439 (D.N.J. June 8, 2015) ("INS is not a party to an access revenue sharing agreement").

such an agreement, Aureon is not now engaged in, nor has it ever been engaged in, access stimulation.[75]

Even if, *arguendo*, Aureon was engaged in access stimulation, which it is not, the Commission's rules would not require any reduction in Aureon's tariff rates. For a Section 61.38 carrier engaged in access stimulation, the Commission rejected a "benchmark to the BOC rate." *USF/ICC Transformation Order*, 26 FCC Rcd. at 17885, ¶ 687. Instead, a Section 61.38 carrier must reduce its tariff rates "unless the costs and demand . . . were reflected in its most recent tariff filing." *Id.* at 17884, ¶ 685. Section 61.38 of the Commission's rules applies to Aureon because it is a dominant carrier "whose gross annual revenues exceed $500,000 for the most recent 12 month period of operations."[76] The traffic and cost studies submitted with Aureon's most recent tariff filing reflected costs and demand, including the additional facility costs and traffic on Aureon's network resulting from access stimulation by carriers other than Aureon.[77] Therefore, Aureon's filed tariff rates fully comply with the Commission's rules.

A Section 61.38 carrier like Aureon cannot benefit from access stimulation because rates calculated under Section 61.38 decrease to reflect any increase in volume of minutes. The Tenth Circuit affirmed the Commission's determination that access stimulation only works for LECs that "need not reduce their access rates 'to reflect their increased volume of minutes.'"[78] Unlike Aureon's rates, the rates of other carriers in the call path of an access stimulated call do not decline as traffic volume increases. For example, AT&T does not reduce its rates as AT&T's customers

[75] F. Hilton Decl. ¶ 15.

[76] 47 C.F.R. § 61.38(a).

[77] Ex. 15, Aureon's 2016 Tariff Filing, Introduction, Overview and Rate Development at 5.

[78] *In re FCC 11-161*, 753 F.3d at 1144-45 (quoting *USF/ICC Transformation Order*, 26 FCC Rcd. at 17874, ¶ 657).

place more conference calls. Nor do other intermediate carriers reduce their rates with increases in traffic volume. Furthermore, the originating LECs for such conference call traffic do not reduce their originating access charges as traffic volume increases. Because Aureon's tariff rates have already been adjusted to reflect costs and traffic volume,[79] AT&T's accusations regarding access stimulation do not excuse AT&T's failure to pay the filed tariff rates.

V. AT&T's Claim That Aureon has Unlawfully Conspired to Prevent the Provision of Direct Trunks is Meritless.

It is completely meritless for AT&T to allege that Aureon has violated the law by requiring AT&T to route its traffic over the CEA network to the end offices of the subtending LECs, such as Great Lakes Communication. As discussed in detail *supra*, the CEA mandatory terminating use requirement adopted by both the Commission and the IUB require such routing in order to make CEA service economically viable for AT&T's smaller IXC competitors in rural Iowa. The IUB required the CEA mandatory use requirement to be implemented through traffic agreements similar to the one between Aureon and Great Lakes Communication. In further implementation of the CEA mandatory use requirement, the Commission adopted Section 69.112(i) expressly exempting CEA provides and the subtending LECs from the requirement to provide direct-trunked transport to AT&T.[80] CEA network routing, in lieu of direct trunks to CEA subtending LECs, is lawful, and AT&T's allegations that what is lawful is illegal is frivolous. It is AT&T that has acted unlawfully through strong-arm tactics that misinform subtending LECs about the CEA mandatory use requirement, and that AT&T scheme to force direct trunks that remove traffic from

[79] F. Hilton Decl. ¶ 19.

[80] *See Transport Rate Structure Order*, 7 FCC Rcd. at 7048-49, ¶ 91 ("([t]he Commission has previously approved centralized equal access arrangements with mandatory termination requirements, . . . and we do not require centralized equal access providers or LECs participating in such arrangements to offer direct-trunked transport service.").

the CEA network violates the Commission's CEA mandatory use requirement. Therefore, routing AT&T's traffic over the CEA network is lawful, and Aureon's traffic agreement with subtending LECs (e.g., Great Lakes Communication) to implement the Commission's CEA mandatory use requirement is also lawful.

VI. The CEA Tariff Rates Are Just and Reasonable and Should not be Reduced by the Commission Prospectively.

A. Background

Section 201(b) provides that "[a]ll charges, practices, classifications, and regulations for and in connection with [communications services provided by Title II carriers] shall be just and reasonable . . . ."[81] Whether a carrier's rate is "just and reasonable" depends on the nature of the service provided, and the classification of the carrier that is being regulated, i.e., dominant or non-dominant. Consistent with the Commission's rate-setting authority as confirmed by the courts,[82] the FCC has elected to implement rate-of-return or price-cap rate regulations for dominant carriers, while the rates of non-dominant CLECs are pegged at the ILEC rate. It is important to note that the Commission recently reclassified all ILECs as non-dominant (due to rate caps or rate benchmarks), while retaining dominant carrier classification for CEA providers such as Aureon.[83] In light of the FCC's decision to reclassify ILECs as non-dominant, CEA providers are the only dominant carriers remaining that calculate switched access rates pursuant to the dominant carrier regulations in Section 61.38.

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[81] 47 U.S.C. § 201(b).

[82] *See, e.g., Permian Basin Area Rate Cases*, 390 U.S. 747, 776-77 (1968) (citing *FPC v. Nat. Gas Pipeline Co.*, 315 U.S. 575, 586 (1942)).

[83] *Technology Transitions*, 31 FCC Rcd. at 9290 n.43.

The FCC has traditionally regulated the rates of dominant carriers pursuant to either rate of return or price-cap regulation. Each regulatory regime uses different methodologies for the Commission to set a just and reasonable rate. It is well established that rate-of-return prescription under the "just and reasonable" standard requires a balancing of ratepayer and shareholder interests.[84] The regulated company must be allowed the opportunity to earn a return that is high enough to maintain the financial integrity of the company and to attract new capital to the business.[85] At the same time, the authorized rate of return must not produce rates that are excessive.[86] The courts have also recognized that there is a "zone of reasonableness" within which reasonable rates may fall, and that a federal agency is entitled to exercise its judgment in selecting a rate of return within that zone.[87]

Aureon is a dominant carrier, and it is not a "Rate-of-Return Carrier" as defined by Section 51.903(g) of the FCC's rules,[88] nor is it an ILEC as defined by 47 U.S.C. § 251(h) because: (1) Aureon has never been a member of NECA;[89] and (2) CEA service does not involve the provision of telephone exchange service. Aureon has always filed its tariff rates pursuant to Section 61.38 applicable to dominant carriers, which, prior to the FCC's *Technology Transitions* order, included ILECs.

Cost of service regulation, which is the regulatory regime pursuant to which Aureon's rates are determined, is the original form of ratesetting utilized by the FCC. Under such regulation, just

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[84] *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944).

[85] *See Bluefield Water Works v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679 (1923).

[86] *Farmers Union Cent. Exch., Inc. v. FERC*, 734 F.2d 1486, 1502 (D.C. Cir. 1984).

[87] *See, e.g.*, *Farmers Union*, 734 F.2d at 1502; *FERC v. Penzoil Producing Co.*, 439 U.S. 508, 517 (1979).

[88] 47 C.F.R. § 51.903(g).

[89] F. Hilton Decl. ¶ 16.

and reasonable rates are based on the costs incurred by the regulated party. In practice, this means that the FCC prescribes a "maximum rate of return,"[90] and "leaves it to the carrier to set its rates at a level designed to yield up to the prescribed rate of return."[91] The Commission determines the prescribed rate of return based upon a methodology known as the "Weighted Average Cost of Capital" ("WACC"). Pursuant to the Commission's rules, the WACC is the sum of "the estimated cost of debt, cost of preferred stock, and cost of equity, each weighted by its proportion in the capital structure of the telephone companies taken as a whole."[92] The Commission then prescribes a unitary rate of return within the "zone of reasonableness" after considering each element of the WACC and relevant policy considerations.[93] The zone of reasonableness reflects the balance between the carrier's "opportunity to earn a return that is high enough to maintain the financial integrity of the company and to attract new capital"[94] with the principle that "the rate of return must not produce excessive rates at the expense of the ratepayer."[95]

The reasonableness of a rate is determined on an objective basis by examining a carrier's compliance with the Commission's prescribed maximum allowable rate of return. "The Commission's chief concern in issuing prescriptions is protecting just and reasonable rates . . . ."[96] The FCC "may determine what rate of return must be . . . observed in the same way it may set a

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[90] *Virgin Islands Tel. Corp. v. FCC*, 444 F.3d 666, 669 (D.C. Cir. 2006).

[91] *MCI Telecomms. Corp. v. FCC*, 59 F.3d 1407, 1409 (D.C. Cir. 1995).

[92] *Connect America Fund, et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd. 3087, 3173-74, ¶ 232 (2016) ("*2016 Connect America Fund Order*").

[93] *Id.* at 3174, ¶ 232 (citing *Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, Order, 5 FCC Rcd. 7507 at ¶ 7 (1990)).

[94] *Id.* at 3201, ¶ 319 (citing *Bluefield Water Works v. PSC*, 262 U.S. 679 (1923)).

[95] *Id.* at 3201, ¶ 319 (citing *Farmers Union Cent. Exch., Inc.*, 734 F.2d at 1502).

[96] *New Eng. Tel. & Tel. v. FCC*, 826 F.2d 1101, 1106 (D.C. Cir. 1984).

just and reasonable rate to be . . . observed."[97] The FCC has chosen the WACC methodology to set the current maximum authorized rate of return at 9.75%, with a five year transition period beginning on July 1, 2016.[98] Prior to the FCC's 2016 America Fund Order, the prescribed rate of return for dominant carriers was set at 11.25%,[99] with the maximum allowable rate of return for access service set at 11.5%.[100]

While Aureon is a dominant carrier, and not a CLEC, it is important to note that CLECs are not subject to cost of service regulation because they are non-dominant carriers and their rates are pegged at the ILEC rate.[101] CLECs "'tariff interstate access charges if the charges are no higher than the rate charged for such services by the competing incumbent LEC (the benchmarking rule).'"[102] CLEC regulations and benchmark rates are wholly inapplicable to Aureon because as a dominant carrier, Aureon is subject to an entirely different cost of service regulatory regime.[103]

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[97] *Id.* at 1106-07.

[98] *2016 Connect America Fund Order*, 31 FCC Rcd. at 3212, ¶ 326 ("For administrative simplicity, we choose July 1, 2016 as the effective date for the initial transitional rate of return of 11.0 percent followed by subsequent annual 25 basis point reductions consistent with the table below until July 1, 2021 when the 9.75 percent rate of return we represcribe today shall be effective.").

[99] *Id.*

[100] *See* 47 C.F.R. § 65.700(b) ("The maximum allowable rate of return for any exchange carrier's earnings for all access service categories shall be determined by adding a fixed increment of one-quarter of one percent to the exchange carrier prescribed rate of return.").

[101] *See Tariff Filing Requirements for Non-Dominant Common Carriers*, Memorandum Opinion and Order, 8 FCC Rcd. 6752, 6754, ¶ 9 (1993) (carriers are considered non-dominant unless the Commission previously finds them to be dominant), *vacated and remanded in part on other grounds*, *Sw. Bell Corp. v. FCC*, 43 F.3d 1515 (D.C. Cir. 1995); *on remand*, 10 FCC Rcd. 13653 (1995).

[102] *Qwest Commc'ns Co. v. Aventure Commc'ns Tech., LLC*, 86 F. Supp. 3d 933, 943-44 (S.D. Iowa 2015) (quoting *Establishing Just and Reasonable Rates for Local Exchange Carriers*, Notice of Proposed Rulemaking, 22 FCC Rcd. 17989, 17994, ¶ 10 (2007) ("*Just and Reasonable Rates for LECs NPRM*") (emphasis added).

[103] *Sprint Comm'cns Co., L.P. v. MGC Commc'ns, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd. 14027, 14030, ¶ 6 (2000) ("*Sprint-MGC MO&O*") ("[T]o the extent a review of the reasonableness of a CLEC's rates depends on a carrier-specific review of the costs of providing

B. Aureon's Rates are Deemed Lawful, and Therefore, Reasonable.

Section 204(a)(3) provides that carriers may file rates with the FCC contained in tariffs, and those rates are "deemed lawful" unless the Commission takes action before the end of the appropriate notice period. In the FCC's *Streamlined Tariff Order*, the Commission interpreted the "deemed lawful" language in Section 204(a)(3) as "establish[ing] a conclusive presumption of reasonableness."[104] Therefore, "a streamlined tariff that takes effect without prior suspension or investigation is conclusively presumed to be reasonable and, thus, a lawful tariff during the period that the tariff remains in effect."[105] Indeed, the U.S. Court of Appeals for the D.C. Circuit has ruled that, consistent with the FCC's reasoning in the *Streamlined Tariff Order*, rates in a deemed lawful tariff are *per se* reasonable.[106] Moreover, in accordance with the U.S. Supreme Court's *Arizona Grocery* decision, once Section "204(a)(3) deems [a carrier]'s rates to be lawful, the inquiry ends."[107]

In this case, during the fifteen day statutory period, the FCC did not initiate a Section 204(a)(1) hearing concerning the lawfulness of the CEA tariff rate increase.[108] The FCC neither investigated nor suspended the CEA tariff rates.[109] Because the FCC did not suspend the effective

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service, it is impossible to be categorical on this point since a CLEC's costs may not be comparable to those of an ILEC."); *see also IT&E Overseas, Inc. v. Micronesian Telecomms. Corp.*, Memorandum Opinion and Order, 13 FCC Rcd. 16058 at ¶¶ 6-8 (1998) ("*IT&E Complaint*") (declining to find that a price-cap carrier's rates were unreasonable for being higher than those of a rate-of-return carrier because the carriers were not "similarly situated").

[104] *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, Report and Order, 12 FCC Rcd. 2170, 2181-82, ¶ 19 (1997) ("*Streamlined Tariff Order*").

[105] *Id.* at 2182, ¶ 19.

[106] *ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403, 411-13 (D.C. Cir. 2002).

[107] *Id.* (citing *Ariz. Grocery Co. v. Atchison, Topeka & Santa Fe Ry. Co.*, 284 U.S. 370 (1932)).

[108] F. Hilton Decl. ¶ 13.

[109] *Id.*

date of the tariff filing, the CEA tariff rate increase became effective July 2, 2013,[110] and is deemed lawful pursuant to Section 204(a)(3). The deemed lawful status of Aureon's CEA tariff means that, by statute, the CEA rate is reasonable, and the FCC cannot entertain AT&T's arguments for a retroactive refund of the CEA rate or treating the filed tariff rate as void *ab initio*.

C. Historical and Current CEA Tariff Rates.

Aureon is under-earning its current authorized rate of return by a significant amount. According to Aureon's most recent Section 61.38 traffic and cost studies, CEA service had a return on interstate investment of negative 343.36% during the year 2015.[111] For the projected twelve month period, July 1, 2016 to June 30, 2017, the current CEA tariff rate will result in a negative 171.69% rate of return.[112]

The current CEA tariff rate already reflects the volume of traffic that AT&T and other IXCs are sending to Aureon's network because Aureon's per minute rate declines as the number of minutes-of-use increase.[113] AT&T alleges, without any support, that Aureon is involved in access stimulation, and claims that this has led to a sizeable increase in Aureon's revenues.[114] Aureon's traffic volume for CEA service began decreasing in 2012, and by 2016 had decreased by 1,025,042,815 minutes annually from 3,833,504,867 minutes in 2011, to 2,808,462,052 minutes in 2016 – which represents more than a 26% decline in CEA traffic volume. J. Schill Decl. at ¶ 30. There has been a corresponding significant decrease in Aureon's interstate CEA gross revenue

[110] 47 U.S.C. § 204(a)(3) (stating that tariff rates "shall be effective . . . unless the Commission takes action").

[111] Ex. 15, Aureon's 2016 Tariff Filing, Introduction, Overview and Rate Development at 2.

[112] *Id.*

[113] F. Hilton Decl. ¶ 19.

[114] Ex. 7, AT&T Reply Comments in Support of Petition of AT&T Services, Inc. for Forbearance Under 47 U.S.C. § 160(c) at 16, WC Docket No. 16-363 (filed Dec. 19, 2016).

of $11,303,912 from $31,419,869 in 2011 to $20,115,957 in 2015.[115] J. Schill Decl. at ¶ 30. It is AT&T's share of that CEA traffic volume that has increased from 48% of the total CEA traffic volume in 2013 to 75% of the total CEA traffic volume in 2016.[116] That sizeable increase in the traffic that AT&T routed to Aureon's CEA network is apparently a result of the wholesale terminating service that AT&T has sold to other IXCs. Furthermore, Aureon is not involved in any traffic stimulation or access revenue sharing activities, and Aureon could not be involved in such activities because CEA service does not provide service to end users.[117] Moreover, Aureon is not a party to an access revenue sharing agreement, which is an essential element of access stimulation.[118] Even if Aureon were involved in access stimulation, which it is not, the Commission determined in the *Connect America Fund Order* that carriers engaged in access stimulation are required to file interstate access tariffs based on projected costs and demand pursuant to Section 61.38.[119] Aureon's CEA rate is already calculated in accordance with Section 61.38, and therefore, any concerns that Aureon is receiving revenues from access stimulation are already addressed.

Furthermore, Aureon has suffered large negative rates of return for the past several years, including the relevant period for this case. As AT&T exerted control over a larger share of the total CEA traffic volume, AT&T ordered more trunks from Aureon, which significantly increased

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[115] *See* Ex. 12, Aureon's 2012 Tariff Filing (filed June 26, 2012), Introduction, Overview and Rate Development at 1; Ex. 15, Aureon's 2016 Tariff Filing, Introduction, Overview and Rate Development at 2.

[116] F. Hilton Decl. ¶ 14.

[117] *Id.* ¶ 15.

[118] *Id.*

[119] *2016 Connect America Fund Order*, 26 FCC Rcd. at 17884, ¶ 685.

Aureon's costs, and then AT&T refused to pay Aureon to recover those additional costs.[120] By contrast, AT&T received more payments from its end user and wholesale customers when end users placed more conference calls that AT&T routed over Aureon's network, and the originating LECs, which include AT&T's ILEC operations, collected more originating access charges.

In Aureon's initial Complaint filed in U.S. District Court for the District of New Jersey, Aureon sought payment of its bills beginning with its September 2013 invoice for CEA service provided to AT&T in August 2013, and for subsequent invoices for CEA service.[121] In AT&T's Answer and Counterclaims,[122] AT&T alleged that Aureon should have reduced its CEA tariff rate beginning with its 2013 tariff filing to comply with the caps established by the *USF/ICC Transformation Order* for non-dominant ILECs and CLECs. Accordingly, the relevant tariffs for purposes of this referral proceeding are Aureon's tariff filings made in 2013, 2014, and 2016.

In 2013, Aureon filed a Tariff Review Plan ("TRP") in which it proposed its existing CEA rate of $0.00896 per minute-of-use ("MOU").[123] Aureon projected that under that proposal, it would earn a 10.79% rate of return, which was less than the FCC's prescribed rate of return of 11.25%, and maximum rate of return of 11.5%.[124] When Aureon filed its 2014 TRP, Aureon reported that its 2013 rate of return was actually only 3.03%, rather than 10.79% as previously projected. Furthermore, Aureon decided that it would not increase its $0.00896 per MOU CEA

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[120] F. Hilton Decl. ¶ 14.

[121] Ex. 18, Complaint of Iowa Network Services, Inc. at ¶¶ 20, 42, 83, 93, *Iowa Network Services, Inc. v. AT&T Corp.*, No. 14-3439 (D.N.J. May 30, 2014).

[122] Ex. 1, Answer and Counterclaims of AT&T Corp. at ¶¶ 20, 42, 83, 93, *Iowa Network Services, Inc. v. AT&T Corp.*, No. 14-3439 (D.N.J. Aug. 4, 2014).

[123] Ex. 13, Aureon's 2013 Tariff Filing (filed June 17, 2013), Introduction, Overview and Rate Development at 1.

[124] *See* Ex. 13, Aureon's 2013 Tariff Filing, Introduction, Overview and Rate Development at 2-3.

rate in its 2014 biennial tariff filing, even though this would result in a projected negative 202.18% rate of return for 2015.[125] In its 2016 TRP, Aureon reported that it experienced a negative 343.36% rate of return for 2015, and an overall negative 219.08% rate of return for the 2014/2015 monitoring period.[126] In its 2016 biennial tariff filings, Aureon again proposed to maintain its existing CEA rate of $0.00896 per MOU, which will result in a projected rate of return of negative 171.69% for 2017.[127]

Although Aureon is not an ILEC, Aureon developed its cost support for its tariff consistent with the procedures for ILECs in order to help the Commission follow the methodology used to calculate the tariff rate for CEA service.[128] Aureon has not increased its CEA rate since its 2013 tariff filing, which became effective on July 2, 2013. Aureon's rate of return since that time, which includes the applicable time period that is the subject of this dispute, has been far less than the FCC's maximum authorized rate of return, and for 2014 and 2015 Aureon's rate of return has been severely negative.

Aureon only very recently learned through discovery that violations of the Commission's CEA mandatory use rule have resulted in the removal of billions of minutes of use from the CEA network. For a substantial length of time, AT&T has known about these violations. In AT&T's complaint proceeding against Great Lakes, the parties stipulated that **[[BEGIN 3P HIGHLY CONFIDENTIAL]]** [redacted]

[125] *See* Ex. 14, Aureon's 2014 Tariff Filing (filed June 16, 2014), Introduction, Overview and Rate Development at 2.

[126] *See* Ex. 15, Aureon's 2016 Tariff Filing, Introduction, Overview and Rate Development at 2.

[127] *See id.*

[128] *Id.* Introduction, Overview and Rate Development at 3. *See also* Ex. 14, Aureon's 2014 Tariff Filing, Introduction, Overview and Rate Development at 3; Ex. 13, Aureon's 2013 Tariff Filing, Introduction, Overview and Rate Development at 3.

[redacted][129] **[[END 3P HIGHLY CONFIDENTIAL]]**

By contrast, Aureon's interstate CEA minutes-of-use for the period ending June 30, 2017 are projected to be only 2,508,443,160.[130] The amount of the traffic bypassing Aureon's network in violation of the Commission's CEA mandatory terminating use rule is unknown at this time. However, given that the amount of traffic terminated by Great Lakes alone was approximately **[[BEGIN 3P HIGHLY CONFIDENTIAL]]** [redacted] **[[END 3P HIGHLY CONFIDENTIAL]]** the amount of traffic that Aureon is projected to carry for all IXCs for an entire year, AT&T's actions to remove traffic from the CEA network through direct connections with all subtending LECs will siphon off a volume of traffic much larger than the traffic volume at issue in the *AT&T v. Great Lakes* case. As discussed above, as the amount of traffic on the CEA network increases, the CEA rate decreases. If the traffic had been routed through the CEA network as required by the FCC's CEA mandatory termination requirement, Aureon's CEA rate would have been significantly reduced not just for AT&T, but also for all of AT&T's smaller IXC competitors serving customers in rural Iowa.

D. Aureon's CEA Tariff Rate is Just and Reasonable.

The FCC primary concern in prescribing a rate of return is to ensure that a carrier's rates are just and reasonable.[131] A carrier's rates are just and reasonable if its rates allow it to earn up to the maximum authorized rate of return.[132] AT&T has alleged that there is improper cross

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[129] *See* **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

[130] Ex. 15, Aureon's 2016 Tariff Filing, Introduction, Overview and Rate Development at 4.

[131] *New Eng. Tel. & Tel.*, 826 F.2d at 1106-07.

[132] *MCI Telecomms. Corp.*, 59 F.3d at 1415 (A carrier's rate is reasonable if it "would not result in a return above the maximum allowed.").

subsidization among Aureon's various divisions as Aureon's fiber network can be used for regulated CEA service, as well as unregulated offerings, such as video. AT&T's cross subsidization allegations are without merit. In calculating its CEA tariff rate, Aureon followed the procedures set forth in Parts 32, 36, and 69 of the Commission's rules, including cost allocations for its fiber costs. All of Aureon's costs are separated into appropriate regulated and non-regulated accounts, and Aureon has used independent third-party consultants to prepare Aureon's cost studies to ensure that its TRP filings are accurate, and comply with the Commission's accounting rules. As shown above, Aureon's CEA tariff rate is reasonable because it generated revenue that resulted in less than the authorized rate of return set by the FCC for 2013 through 2016.

Aureon's rates are reasonable for other reasons as well. Aureon's interstate tariff rate is not a per-mile, distance sensitive rate, even though Aureon transports AT&T's traffic over long distances. Regardless of whether a call is transported 10 miles or 100 miles, Aureon charges the same per-minute rate to IXCs for interstate service. The CEA tariff rate in Aureon's interstate tariff is referred to as the switched transport rate.[133] That single switched transport rate recovers the costs of both transport and tandem switching.[134] ILECs, including AT&T's ILEC operations, bill separate tandem switching and distance-sensitive transport rates to recover their costs for each of those rate elements. In order to make rural areas more attractive for small IXCs to serve, Aureon charges a non-distance sensitive switched transport rate that provides IXCs with access to the more than 2,700-mile CEA network.[135]

[133] Ex. 53, INAD Tariff F.C.C. No. 1, § 6.8.1(A), 12th Revised Page 145.

[134] F. Hilton Decl. ¶ 10.

[135] *Id.*

If Aureon were a CLEC, which it is not, then the NECA rates would apply to Aureon's switching and transport service to rural Iowa because CEA service does not provide service to any end users in an urban area.[136] Applying NECA's tariff rates further demonstrate the reasonableness of Aureon's composite switched transport rate. The average distance between the CEA tandem and the points of interconnection with LECs is 101 miles.[137] For terminating a call 101 miles, a NECA member bills $0.051648 per minute for a combination of tandem switched facility (101 miles multiplied by $0.000433 per minute), tandem switched termination ($0.002247 per minute), and tandem switching ($0.005668 per minute).[138] By comparison, Aureon's tariff bills only $0.00896 per minute, or less than one-fifth of the NECA amount, for terminating the same interstate call. Indeed, in AT&T's FCC complaint proceeding against Great Lakes, AT&T admitted that Aureon transports AT&T's traffic over 130 miles to Great Lakes' network, and does not charge for entrance facilities.[139] All of the service elements that would normally be billed separately by other carriers are contained in a single interstate rate billed by Aureon to IXCs on a per-minute of use basis, and that rate does not vary regardless of the distance a call is transported.

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[136] *Great Lakes Comnet, Inc. v. FCC*, 823 F.3d 998, 1004 (D.C. Cir. 2016) (whether the rural CLEC exception to the rate benchmark applies to an intermediate carrier depends upon whether "it 'serve[s] . . . any end users' in an urban area, not if it has 'transport facilities' in an urban area.").

[137] F. Hilton Decl. ¶ 10.

[138] Ex. 62, NECA Tariff F.C.C. No. 5, § 17.2.2, 10th Revised Page 17-10.2.1.2.

[139] Ex. 4, AT&T Complaint at ¶ 58, *AT&T Corp. v. Great Lakes Commc'ns Corp.*, Docket No. 16-170, File No. EB-16-MD-001 (filed Aug. 16, 2016) ("[Aureon] transports the calls over its fiber network from Des Moines to GLCC's point of interconnection in Spencer (a total distance of approximately 133 miles."); Ex. 64, Reply Declaration of John W. Habiak at ¶ 21, AT&T Reply to the Answer, *AT&T Corp. v. Great Lakes Commc'ns Corp.*, Docket No. 16-170, File No. EB-16-MD-001 (filed Oct. 6, 2016) ("[T]he [Aureon] rate . . . does not include [entrance facilities costs].").

Aureon's rates are also reasonable because they are not subsidized by Connect America Fund or Universal Service Fund ("USF") support.[140] Although Aureon provides service in high-cost rural areas, it has never received Connect America Fund or USF support for its CEA operations. Rather, Aureon's CEA operations have had to rely exclusively on the revenues that it receives from IXCs for its CEA service.[141] Aureon's cost studies filed in support of Aureon's current tariff rate were performed in accordance with the FCC rules, and its cost support information confirm that Aureon's rate of return is less than the FCC's prescribed rate of return of 11.25% and maximum authorized rate of return of 11.5%, and are therefore, reasonable. In contrast, ILECs, such as AT&T and CenturyLink, do receive USF support, and the access tariff rates billed by AT&T and CenturyLink can be lower because they are subsidized by USF funds. By any measure, Aureon's rates are just and reasonable, and AT&T's claims to the contrary are without merit.

VII. Aureon's CEA Rates are Just and Reasonable, and its Tariff Filings Contained the Required Cost Support Materials to Justify Those Rates.

AT&T contends that Aureon's corporate structure is improper because the Access Division, which provides CEA service, does not own its own fiber network, but rather, leases capacity from Aureon's Network Interexchange Carrier Division ("IXC Division"). AT&T Legal Analysis at 48. According to AT&T, such an arrangement raises concerns regarding the possibility of cross-subsidization and/or rate manipulation. *Id.* AT&T raised cross-subsidization concerns in Aureon's original Section 214 application proceeding in 1988, and the FCC determined that Aureon's proposal to operate the Access and IXC Divisions would comply with the FCC's

[140] F. Hilton Decl. ¶ 4.

[141] *Id.*

structural separation requirements applicable to dominant carriers, and address cross-subsidization concerns.

The FCC's *Fifth Report and Order* in the Competitive Common Carrier Services proceeding[142] prohibited Aureon's Access Division from jointly owning the transmission and switching facilities with Aureon's IXC Division. The *Fifth Report and Order* required a carrier's access division to "have separate books of account, and must not jointly own transmission or switching facilities" with its IXC Division.[143] The Commission mandated this corporate arrangement in order to "protect[] against cost-shifting and anticompetitive conduct . . . ."[144] As required by the *Fifth Report and Order*, Aureon created separate corporate divisions which facilitated access services (i.e., the Access Division), and competitive services (i.e., the IXC Division). Aureon's division of its CEA and interexchange services between the Access and IXC Divisions, respectively, was approved by the Commission at the time it granted Aureon's Section 214 authorization in 1989.[145]

AT&T asserts that although the FCC recognized that cross-subsidization issues could arise, the Commission did not directly address them in the *FCC 214 Order*. AT&T Legal Analysis at 49. AT&T is wrong. As discussed above, the FCC required Aureon's CEA service and network facilities operations to be in separate divisions to address cross-subsidization concerns. Pursuant to AT&T's recommendation, the FCC imposed a circuit usage reporting requirement on Aureon

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[142] *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, Fifth Report and Order, 98 F.C.C.2d 1191 (1984) ("*Fifth Report and Order*").

[143] *Fifth Report and Order*, 98 F.C.C.2d at 1198-99, ¶ 9.

[144] *Id.*

[145] *FCC 214 Order*, 3 FCC Rcd. at 1469, ¶ 10.

to prevent cross-subsidization.[146] Aureon has previously filed biannual reports as required by the Commission. J. Schill Decl. ¶ 6 (discussing Rhinehart's First Observation).

AT&T cites the *Indiana Switch 214 Order*[147] apparently for the proposition that the FCC will "carefully scrutinize" future rate submissions from CEA providers, and presumably reexamine Aureon's CEA rates retroactively. In the paragraph cited by AT&T, the FCC stated that "*no access tariff will be allowed to become effective* which unreasonably discriminates or contains unjust or unreasonable terms and conditions."[148] Aureon's CEA tariff filings contained all the cost support materials required for those tariffs to go into effect, and the FCC did not suspend Aureon's tariffs or take any other actions.[149] The FCC allowed Aureon's CEA tariff to go into effect, and did not find that Aureon's CEA rate was unjust or unreasonable.

A. Aureon's CEA Rates are Just and Reasonable, and Fully Supported by its Cost Studies.

AT&T alleges that Aureon's CEA rates are high given that rates for telecommunications service have generally declined in the industry. AT&T Legal Analysis at 49. AT&T further asserts that Aureon's CEA rates have "remained relatively flat" and Aureon's rates should have been lower due to equipment depreciation and increases in traffic volumes. *Id.* at 49-50. AT&T's

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[146] *Id.* ¶ 24.

[147] Ex. 26, *Application of Indiana Switch Access Div. for Auth. Pursuant to Section 214 of the Commc'ns Act of 1934 & Section 63.01 of the Commission's Rules & Regulations to Lease Transmission Facilities to Provide Access Serv. to Interexchange Carriers in the State of Indiana*, Memorandum Opinion, Order and Certificate, W-P-C-5671, 1986 WL 291436 (FCC Apr. 10, 1986) ("*Indiana Switch 214 Order*").

[148] AT&T Legal Analysis at 49 (citing *Indiana Switch 214 Order*, 1986 WL 291436, slip op. at 3, ¶ 6 (emphasis added)).

[149] *See* F. Hilton Decl. ¶ 13 (FCC did not suspend or take action against Aureon's 2013 tariff filing).

comparison of Aureon's CEA service rates to general trends in the telecommunications industry is inapt.

The fact that Aureon's CEA rate follows trends different than that for access charges is unsurprising given that CEA service is a different type of access service than the more limited service provided by LECs. J. Schill. Decl. ¶ 8. Unlike access service provided by LECs, which involves a separate switched access rate and a distance sensitive transport rate, Aureon's interstate CEA service is provided pursuant to a single tariff rate that is referred to as the switched transport rate. *Id.* That single switched transport rate recovers the costs of both transport and tandem switching. *Id.* In order to make rural areas more attractive for small IXCs to serve, Aureon charges a non-distance sensitive switched transport rate that provides IXCs with access to the more than 2,700-mile CEA network. *Id.* AT&T's comparison of Aureon's CEA rate to access charges billed by the general telecommunications industry is flawed as CEA service provided by Aureon, and access service provided by LECs, are not the same type of access service. *Id.* Contrary to AT&T's assertion, Aureon's CEA rate has not remained flat. Between 1989 and 2017, the CEA rate declined approximately 23.4%, which AT&T's witness, Mr. Rhinehart, acknowledges in his declaration. *Id.* ¶ 7 (citing Rhinehart Decl. ¶ 8).

Furthermore, depreciation and traffic volumes are fully accounted for in Aureon's CEA rate as shown in the cost support materials filed with Aureon's tariff filings. Traffic volumes have, in fact, fluctuated dramatically and have had the effect of driving down rates during the peak years of the 2010 and 2012 studies. *Id.* ¶ 9. Subsequent years, with decreases in traffic, had the opposite effect. *Id*. Depreciation expense, on the other hand, is not a major driver of the tariff calculations. *Id*. In Aureon's 2006 tariff filing, Plant in Service (net after accumulated depreciation) allocated to the Access Division was $8.9 million, with related depreciation of $2.7 million included in the

study. *Id*. In the 2016 filing, the net Plant in Service was $3.7 million with related depreciation of $1.4 million. *Id*. The reduced depreciation did indeed impact the tariff rate by reducing Aureon's revenue requirement. *Id*.

Despite AT&T's contentions, Aureon's CEA rates do reflect cost efficiency gains resulting from upgrades to its fiber network. In its tariff filings, Aureon has reported millions of dollars in infrastructure upgrades over the past several years. *Id.* ¶ 11. However, any gains realized by network infrastructure upgrades made to Aureon's fiber network over the past several years have been offset by increases in access stimulation traffic volumes, and the need to augment facilities in order to handle that traffic. *Id*. Because Aureon is not involved in access stimulation, it is difficult for Aureon to predict how much access stimulation traffic will be routed across its CEA network – which, in turn, affects its ability to project revenue requirements. *Id*.[150] Moreover, the supported rate of $0.01332 in Aureon's 2016 tariff filing, which AT&T describes as two tenths higher than the 1989 tariff rate, is at that level due to the inclusion of $16.5 million of uncollectible expense in the study. J. Schill. Decl. ¶ 11. Were it not for this uncollectible amount, for which AT&T is directly responsible, the calculated support rate would have decreased 26% from the rate

[150] AT&T cites the Copeland Declaration to support its argument that Aureon's CEA service rates do not reflect upgrades to its fiber network. AT&T Legal Analysis at 50 (citing Rhinehart Decl. ¶ 10 (in turn, citing AT&T Complaint Ex. 67, Copeland Decl. ¶¶ 11-14)). The Copeland Declaration was made in the context of the *Qwest Commc'ns Corp. v. Farmers & Merchs. Mut. Tel. Co.* complaint proceeding, which concerned the access charges of an ILEC, rather than a CEA provider. *See Qwest Commc'ns Corp. v. Farmers & Merchs. Mut. Tel. Co.*, File No. EB-07-MD-001. Costs associated with LEC access service are not comparable to CEA service costs. The CEA rate includes switching and transport charges in a single non-distance sensitive interstate rate. In contrast, end office switching and transport rates are charged separately for access service provided by ILECs and CLECs. Moreover, transport service provided by ILECs and CLECs is based on mileage. Therefore, the arguments relied upon by AT&T and Mr. Rhinehart in the Copeland Declaration are inapplicable to determining the reasonableness of Aureon's CEA service rate.

in 2014, and 58% from the rate in 1989, and would be $0.00673 – a full half cent less than in 1989. *Id.*

Finally, AT&T states that because Aureon lowered the rates for "some of its non-CEA services" over the past fifteen years, it should have also similarly reduced its CEA service rate. AT&T Legal Analysis at 52. AT&T points to the **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** *Id.* AT&T also avers that beginning in 2004, Aureon contracted with several LECs to provide switching and transport service **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** *Id.*

AT&T's references here to the reductions in the **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL CONFIDENTIAL]]** and the **[[BEGIN CONFIDENTIAL]]** [redacted] **[[END CONFIDENTIAL]]** do not have any bearing on whether Aureon's CEA service rates must be reduced.[151] Aureon's CEA interstate rate is a single switched transport rate that provides access to more than 2,700 miles of fiber to reach all of the subtending LECs connected to the CEA network. J. Schill Decl. ¶ 12. By contrast, non-CEA services are tailored to specific customer needs, and only involve small amounts of transport and capacities.

[151] The *AT&T Corp. v. BTI, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd. 12312, 12323-32, ¶¶ 23-41 (2001) case cited by AT&T is irrelevant to the instant proceeding. According to AT&T, the FCC determined in *BTI* that a carrier's access rates were not reasonable based on comparisons to other benchmarks. AT&T Legal Analysis at 53. Aureon's CEA rate is not benchmarked like a CLEC's rates because Aureon is not a CLEC. Rather, the CEA rate is based on Aureon's costs and revenue requirement, and Aureon submits all cost study materials required by Section 61.38 for dominant carriers to support its CEA rate when it files its tariff review plans.

Id. No conclusions can be drawn with regard to Aureon's CEA rates from the reduction in rates for non-CEA services.

Moreover, the Commission's **[[BEGIN 3P CONFIDENTIAL]]** [redacted] [152] [redacted] **[[END 3P CONFIDENTIAL]]** The fact that Aureon lowered its rates for non-CEA services has no bearing on the reasonableness of the rates of its CEA service given that the services are unrelated.

B. Aureon Appropriately Handled Network Investment Costs.

As discussed above, when the FCC granted Section 214 authority to Aureon, the Commission required CEA service to be provided by the Access Division, and the network to be owned by the IXC Division. AT&T admits that Aureon properly instituted the FCC's structural separations requirement by not recording investments in the fiber network on the Access Division's books. AT&T Legal Analysis at 53. Nonetheless, despite the FCC's requirement for the network to be owned by the IXC Division, and for the Access Division to lease capacity from

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[152] *AT&T Corp. v. Alpine Commc'ns, LLC*, Memorandum Opinion and Order, 27 FCC Rcd. 11511 (2012).

the IXC Division, AT&T argues that this is problematic because the lease rate is not disclosed in Aureon's tariff filings or support data disclosed in discovery. *Id.* at 53-54. AT&T misunderstands the FCC's requirements regarding cost studies and the structural separations requirement.

Aureon reported in several of its tariff filings that it made significant investments in upgrading its fiber network. J. Schill Decl. ¶ 16. Furthermore, the cost support for Aureon's tariff filings show the transport costs incurred by the Access Division by leasing facilities from the IXC Division. *Id.* As further detailed below, Mr. Rhinehart's assumptions in his analysis are fundamentally flawed, and as a result, his rate comparison analysis is completely erroneous. *Id.*

Account 6410 (Cable & Wire Facilities Expenses) includes the lease costs that Aureon's Access Division incurs for the amount of facilities it leases from the IXC Division. *Id.* Lease costs are directly assigned to the division to which the lease rate is charged. *Id.* All non-lease expenses in Account 6410 are assigned to undistributed costs and allocated on the basis of Cable and Wire Facilities ("CWF") investment in Account 2410. *Id.* Since all CWF investment in Account 2410 is assigned to the IXC Division, all Account 6410 undistributed expenses are thereby assigned to the IXC Division. *Id.* Network lease costs are periodically tested for reasonableness based on an analysis of costs derived from the IXC Division. *Id.*

Mr. Rhinehart also contends that Aureon's tariff filings do not provide information regarding the basis for the Access Division's lease costs for Cable & Wire Facilities in light of the fact that network costs constituted between 45.3% and 75.5% of the division's revenue requirement between 2004 and 2017. *Id.* The Commission's accounting rules do not require the tariff cost support to include lease rates. *Id.* Nevertheless, Aureon's tariff filings do disclose all the information necessary to calculate the lease rate paid to the IXC Division for fiber: the result of dividing the transport costs by the reported minutes of use.

AT&T further alleges that **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] [redacted][153] [redacted] **[[END HIGHLY CONFIDENTIAL]]** AT&T Legal Analysis at 54.

It is important to note that the DS-3 route mile rate stated by AT&T is an equivalent rate calculated by Mr. Rhinehart, and not a rate reported by the Access Division. *Id.* ¶ 18. Mr. Rhinehart's attempt to compare the DS-3 route miles rate charged by the IXC Division to the Access Division and other entities is based on false and highly misleading assumptions. *Id.* Specifically, a DS-3 circuit has the capacity of 672 DS-0 channels. *Id.* Mr. Rhinehart calculates an equivalent DS-3 rate per mile by multiplying the reported DS-0 rate per mile of **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** times 672 DS-0 channels to arrive at an assumed monthly rate of **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** per DS-3 route mile. *Id.* It is not standard industry practice to price a DS-3 circuit by multiplying a DS-0 rate times 672 DS-0 channels. *Id.* This one assumption by Mr. Rhinehart is so significantly flawed that it renders the remainder of his analysis invalid. *Id.* Furthermore, the CEA rate required to make a comprehensive more than 2,700 mile rural network of common trunks available to all IXCs on a non-discriminatory basis cannot be

[153] AT&T Legal Analysis at 54 (citing Rhinehart Decl. ¶ 16 (in turn, citing Ex. 69, Deposition of Dennis Creveling, *Alpine Commc'ns v AT&T Corp.*, No. 08-01042, at 28:3-29:6 (N.D. Iowa) (taken Feb. 10, 2010))).

rationally compared to a single lease for transport between only two geographic points, or to the limited service provided for land-to-mobile traffic or the point-to-point transport provided by third parties without all the CEA functions. *Id.*

AT&T's assertion that Aureon should be required to demonstrate that the lease rates paid by the Access Division do not exceed the rates by similarly situated is without merit. As noted by the FCC in the *FCC 214 Order*, Aureon fully disclosed to the Commission that the IXC Division would not charge the Access Division the lowest rate paid by other users of the IXC Division's fiber network.[154] The FCC granted the Section 214 certificate to Aureon knowing this, and did not impose a "lowest lease rate" condition like Indiana Switch offered to the FCC when the Commission approved the Section 214 certificate for CEA service provided by Indiana Switch.[155] Furthermore, the Access Division leases capacity of the entire IXC Division fiber network, whereas individual DS-3 circuit leases are discrete capacity arrangements that have a different cost structure than capacity leases between the Aureon divisions. *Id.* ¶ 19. Mr. Rhinehart's observations regarding the leases for discrete DS-3 circuits versus the Access Division's fiber leases are simply irrelevant with regard to the issues in this case. *Id.*

C. Aureon's Allocation of Costs for Network Facilities was Appropriate, and its Least Costs are Supported.

As discussed above, Aureon has implemented structural separations, submitted cost support materials with its tariff filings, and filed periodic reports as required by the FCC. The FCC has determined that those requirements are sufficient to safeguard against cross-subsidization concerns. Nonetheless, AT&T contends that Aureon over-allocated its infrastructure investment costs to the Access Division, and that the Access Division may be cross-subsidizing other Aureon

[154] *FCC 214 Order*, 3 FCC Rcd. at 1470,¶ 12.

[155] *Indiana Switch 214 Order*, 1986 WL 291436, slip op. at 8, ¶ 22.

divisions through its lease payments to the IXC Division. AT&T Legal Analysis at 55-57. As further detailed below, AT&T's allegations are meritless.

Aureon's cost allocations for the Access Division's use of Aureon's fiber network are compliant with the Commission's accounting rules. J. Schill Decl. ¶ 20. These cost allocations are based on the actual use of facilities provided to the Access Division at lease rates that are at or below the fully distributed cost of the network facilities provided. *Id.* Any attempt to use generalized Access Division cost relationships from year to year to determine the reasonableness of one component of expense (charges for network costs) is improper, especially when the facilities being leased to the Access Division remain fairly constant from year to year. *Id.* Any determination of the reasonableness of network costs allocated to affiliate divisions can only be performed based on an analysis of the cost and use of the facilities being provided. It is not apparent from Mr. Rhinehart's declaration that this analysis was performed. *Id.*

Furthermore, Aureon's calculation of lease costs allocated to the Access Division are proper. *Id.* The Commission's accounting rules do not require tariff cost support to include the lease rate between divisions. *Id.* The fact that Aureon used different cost accounting methodologies between the Access Division's network costs and its other costs, such as switching costs, is not problematic as cost factors can vary depending on the type of cost. *Id.* Accordingly, any concerns regarding Aureon's allocation of network costs to the Access Division are unfounded. *Id.*

AT&T attempts to argue that the lease rate being charged by the IXC Division to the Access Division is excessive when compared to the rate for equivalent capacity charged to other parties. In Mr. Rhinehart's declaration, he states that at a rate of **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** per DS-0 route mile, the equivalent charge is equal

to **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** per DS-3 route mile, and then compares this equivalent rate to Aureon's DS-3 rate of **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** per DS-3 circuit charged to another party. J. Schill Decl. ¶ 22. Mr. Rhinehart arrives at this conclusion using the assumption that there are 672 DS-0 circuits (or channels) in a DS-3 circuit, and therefore, if 672 DS-0 channels are multiplied by the DS-0 route mile rate of **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**, that will result in an equivalent rate per DS-3 route mile of **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**. *Id.* Mr. Rhinehart's assumption that the pricing of DS-0 circuits can be scaled to equivalent DS-3 route miles using a simple multiplier is fundamentally flawed. *Id.*

All circuits (regardless of capacity level) are provisioned using a combination of transmission equipment (central office equipment, or "COE") and outside plant equipment (cable and wire facilities, or "CWF"). *Id.* ¶ 23. While the cost of transmission equipment is variable and sensitive to the bandwidth being provided, the price differential is not directly correlated with the change in bandwidth (number of channels) being provided. *Id.* In other words, the cost of transmission equipment used to provision a DS-3 circuit is not 672 times the cost of transmission equipment used to provision a DS-0 circuit. *Id.* In the case of Aureon, the cost of transmission equipment used to provision a DS-0 circuit is calculated in the amount of **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]** after factoring the DS-1 cost down to the DS-0 level. *Id.* The cost of transmission equipment used to provision a DS-3 circuit is calculated in the amount of **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY**

CONFIDENTIAL]] or 66.6 times the equivalent cost of a DS-0 circuit, not 672 times the cost as assumed by Mr. Rhinehart in his flawed rate comparison. *Id.*

Furthermore, under current industry guidelines, CWF investment costs cannot be allocated between services (DS-0, DS-1, or DS-3) on the basis of bandwidth (channels). *Id.* ¶ 24.[156] Carriers may opt to use the path, circuit, or system method to allocate CWF costs between services. J. Schill Decl. ¶ 24. Aureon uses the path method for the allocation of CWF costs between services. *Id.* Under this method, each type of circuit is afforded the same weighting in the allocation of CWF costs between services *Id.* Therefore, the cost of CWF investment used to provision a DS-3 circuit to a customer premise would be the same as the cost of CWF investment used to provision a DS-0 or DS-1 circuit to the same customer premise. *Id.*

Based on the aforementioned industry-recognized cost allocation methodologies, and after assessing the appropriate mix of COE and CWF costs included in the provisioning of DS-0, DS-1 and DS-3 circuits as well as the average miles of the respective provisioned circuits, it is reasonable to assert that the cost differential between a DS-3 circuit and a DS-0 circuit calculated using the same circuit miles is a factor of 30.37 times, not 672 times as assumed by Mr. Rhinehart. *Id.* ¶ 25. Moreover, since Mr. Rhinehart did not specify the circuit mileage attributed to the IXC Division rate charged to other parties, it is impossible to make a reasonable comparison between the rates charged by the IXC Division to the Access Division versus other parties since the rate charged the Access Division is mileage sensitive. *Id.*

It is important to note that the IXC Division's operating expenses and plant investments have remained relatively constant during the period under observation by Mr. Rhinehart, and network enhancements continue to be planned as new technologies become available. *Id.* ¶ 26.

[156] *See also* Ex. 63, NECA Reporting Guidelines, NRG 4.19 (revised Feb. 2013).

Additionally, the number of circuits leased to the Access Division have also remained relatively constant during the period under observation by Mr. Rhinehart. *Id.* Table 1, attached to Jeff Schill's declaration, provides an analysis of the network expenses, net telephone plant, and revenue requirements for the periods that were analyzed by Mr. Rhinehart. *Id.* The data shows the consistency of network costs during these periods which make up the underlying basis supporting the lease costs for the Access Division. *Id.* While Aureon has been forced to shoulder many costs of the Access Division (in light of the fact that two carriers who are receiving CEA service are refusing to pay for those services), Aureon continues to invest in and maintain a reliable and robust network for the provision of CEA service to all carriers as required by the FCC and state regulators due to its status as a common carrier. *Id.* The data also shows that the DS-0 lease rate charged to the Access Division is justified based on the costs of the IXC Division. *Id.*

Furthermore, Table D – Five Year Lease Cost Forecasts, in Mr. Rhinehart's declaration is not relevant to lease costs associated with the Access Division. *Id.* ¶ 27. The information therein represents the budgeted and forecasted total interproduct lease revenue and expense for all of Aureon's divisions and products. *Id.* The product mix and associated parameters that determine the lease charges can change from year to year, and the resulting total company figure is irrelevant to this discussion, and no conclusions can be made from such information. *Id.*

Only recently did Aureon learn **[[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**

Accordingly, lease forecast concerns regarding cross-subsidization are grossly misplaced and unfounded. *Id.*

Table E to Mr. Rhinehart's declaration is also not relevant as a measure of expense activity for the Access Division. *Id.* ¶ 29. A closer look at Section 5 of the cost support for Aureon's tariff filings illustrates this. *Id.* As required by the FCC's rules, no CWF investments are directly allocated to the Access Division. *Id.* Mr. Rhinehart's table would suggest that costs have tripled based on Table E's CWF investment activity. *Id.* As previously discussed, Aureon's revenue requirement has been declining (excluding uncollectibles) rather than increasing, which is the opposite of Mr. Rhinehart's inference. *Id.* The increases in these CWF investments over the past several years[157] were not based upon the fluctuations in the Access Division's projections for its overall interstate throughput – which declined by approximately 28% between 2012 and 2016.[158] J. Schill Decl. ¶ 29.

Aureon's traffic volume for CEA service began decreasing in 2012, and by 2016 had decreased by 1,025,042,815 minutes annually from 3,833,504,867 minutes in 2011 to 2,808,462,052 minutes in 2016, which represents more than a 26% decline in CEA traffic volume.

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[157] Ex. 11, Aureon's 2010 Tariff Filing (filed June 16, 2010), at Section 5, Part 64 Separations, Schedule S-2, Line 4 (Cable & Wire Facilities) ($26,818,101); Ex. 12, Aureon's 2012 Tariff Filing (filed June 26, 2012), at Section 5, Part 64 Separations, Schedule S-2, Line 4 (Cable & Wire Facilities) ($43,102,372); Ex. 13, Aureon's 2013 Tariff Filing (filed June 17, 2013), at Section 5, Part 64 Separations, Schedule S-2, Line 4 (Cable & Wire Facilities) ($57,085,004); Ex. 14, Aureon's 2014 Tariff Filing (filed June 16, 2014), at Section 5, Part 64 Separations, Schedule S-2, Line 4 (Cable & Wire Facilities) ($59,282,926); Ex. 15, Aureon's 2016 Tariff Filing (filed June 16, 2016), at Section 5, Part 64 Separations, Schedule S-2, Line 4 (Cable & Wire Facilities) ($74,866,654); Ex. 17, Aureon's 2017 Tariff Filing (filed Apr. 14, 2017), at Section 4, Part 64 Separations, Schedule S-2, Line 4 (Cable & Wire Facilities) ($68,284,259).

[158] Ex. 11, Aureon's 2010 Tariff Filing, at Section 2, Schedule A, Line 2 (3,481,819,561 minutes); Ex. 12, Aureon's 2012 Tariff Filing, at Section 2, Schedule A, Line 2 (3,339,631,164 minutes); Ex. 13, Aureon's 2013 Tariff Filing, at Section 2, Schedule A, Line 2 (2,925,535,070); Ex. 14, Aureon's 2014 Tariff Filing, at Section 2, Schedule A, Line 2 (2,019,322,322 minutes); Ex. 15, Aureon's 2016 Tariff Filing, at Section 2, Schedule A, Line 2 (2,508,443,160 minutes).

Id. ¶ 30. There has been a corresponding significant decrease in Aureon's interstate CEA gross revenue of $11,303,912 from $31,419,869 in 2011 to $20,115,957 in 2015, which constitutes a revenue decrease of nearly 36%. *Id.* A primary factor for the decline in traffic is likely due to a huge decrease in traffic related to access stimulation by subtending LECs. *Id.* The annual traffic volume that Aureon assumes is the result of access stimulation by subtending LECs decreased by more than 912 million minutes between 2011 and 2016. *Id.* Traffic volume is determined by IXCs. *Id.* As stated in Aureon's 2013 tariff filing, the impetus for upgrading Aureon's network facilities was primarily the increasing age of Aureon's network, and the resulting degradation in the quality of its facilities – *not* its forecasted demand for capacity.[159] J. Schill Decl. ¶ 30. As a result of such upgrades, replacement of older facilities with newer technologies has resulted in the ancillary benefit of increased capacity – despite recent decreases in the Access Division's overall interstate throughput. *Id.* Accordingly, any concerns regarding the impact of increased infrastructure investments on Aureon's lease cost calculations are unfounded. *Id.*

Aureon's projected lease cost per MOU allocated to the Access Division does not demonstrate that Aureon has over allocated its network costs to the Access Division. *Id.* ¶ 31. As demonstrated by Mr. Rhinehart, Aureon's projected lease cost per MOU allocated to the Access Division steadily declined from 2005 to 2013, increased in 2014 and 2015, and declined again in 2017.[160] *Id.* As mentioned above, the reasons for these fluctuations in traffic is indeterminable by Aureon because traffic volume is determined by IXCs. *Id.* As with lease cost forecasts discussed above, fluctuations in the annual projected lease cost per MOU resulted from annual variances in

[159] Ex. 13, Aureon's 2013 Tariff Filing, Introduction, Overview and Rate Development at 2 ("Over the years, [Aureon] has implemented a state of the art fiber network throughout the state of Iowa . . . *As this network ages*, [Aureon] has plans to upgrade its fiber routes and electronics to bring newer technologies and increased capacity in areas where needed.") (emphasis added).

[160] Rhinehart Decl. ¶ 26.

access stimulation traffic volume estimates. *Id*. Similarly, because Aureon is not involved in access stimulation, it is difficult for Aureon to predict how much access stimulation traffic will be routed across its CEA network – which, in turn, affects its ability to forecast lease costs paid by its Access Division. *Id*. Accordingly, Aureon's projected lease cost per MOU between 2005 and 2013 does not demonstrate that Aureon over-allocated its network costs to the Access Division. *Id*. Mr. Rhinehart's arguments concerning the unreasonableness of the differential between the rate charged by the IXC Division to the Access Division and the rate charged to another party are based on significantly flawed assumptions, and should not be given any credence in this proceeding. *Id*.

D. Aureon's Allocation of Costs between Interstate and Intrastate Traffic is Appropriate, and is not Within Aureon's Control.

AT&T asserts that one of the assumptions for approval of Aureon's Section 214 application was that the majority of the network costs would be recovered from intraLATA toll calls, and that the FCC would need to review Aureon's proposal if that assumption changed. AT&T Legal Analysis at 57. AT&T is incorrect. The condition imposed by the FCC was not that the Commission would need to review Aureon's proposal if the mix of intrastate and interstate traffic changed. Rather, the Section 214 condition was whether the state regulatory agencies would require "[Northwestern Bell ("NWB")] [to] use the [CEA] system for NWB's intrastate, intraLATA toll calls . . . ." *FCC 214 Order*, 3 FCC Rcd. at 1473, ¶ 32. The FCC further stated that "[i]f the appropriate state agencies [did] not approve [the Access Division's] arrangement as proposed here . . . [the FCC] would need to review [the Access Division's] proposal" as a result of the failure of the state agencies to require mandatory use by NWB for intrastate, intraLATA toll calls. *Id.* In the *FCC 214 Recon. Order*, the Commission specifically addressed the issue of

whether the Section 214 condition had been satisfied, and ruled that the Access Division submission of its state authorization satisfied the FCC's condition.[161]

Although Aureon has already satisfied the Section 214 condition imposed by the FCC, AT&T nonetheless argues that Aureon's traffic allocation is improper. AT&T Legal Analysis at 56-57. It is important to note that Aureon does not have any control over the jurisdiction of the traffic that is sent by IXCs to the CEA network. J. Schill Decl. ¶ 33. The intrastate and interstate traffic allocations are simply a function of the traffic on the network. *Id.* Mr. Rhinehart surmises that in 2008, there was a change in the percentage of interstate use ("PIU") factor that led to more of Aureon's revenue requirement being allocated to interstate. *Id*. The change in PIU factor was not due to an arbitrary decision by Aureon to designate more traffic as interstate. *Id*. Rather, this was due to upgrades in Aureon's equipment to better track the jurisdiction of the calls on the CEA network. *Id*.

In 2007, Aureon upgraded its CEA switches, which enabled Aureon's billing system to process and download call records directly from the switch, rather than from a legacy third-party system that had been in place for years. *Id*. ¶ 34. Around that same timeframe, Aureon implemented a new billing system that converted the jurisdiction calculation from using JIPs (jurisdiction information parameters) and location routing numbers (LRNs) to originating and terminating numbers. *Id*. This change resulted in more accurate identification of interstate calls because, while most Iowa LECs included JIP and/or LRN information with their call data, traffic from other carriers did not include that information. *Id*. Before the upgrade, the identification of intrastate traffic was considerably more accurate than the identification of interstate traffic. *Id*.

[161] *FCC 214 Recon. Order*, 4 FCC Rcd. at 2201, ¶ 7 ("[W]e conclude INAD's [the Access Division's] state authority satisfies our condition.").

Since the jurisdiction of "unknown traffic" was proportioned based on the traffic of "known" traffic, improving the identification of interstate traffic not only increased the number of calls that could be identified by call records, it also altered the PIU that was applied to unknown traffic. *Id.* Properly developed PIU factors reported by IXCs are used to allocate between jurisdictions any remaining traffic for which the jurisdiction has not been identified by Aureon's systems. *Id.*

As part of the process to validate the accuracy of the jurisdiction identification system, Aureon audited its procedures and identified a number of issues in its records that impacted the accuracy of its billing. *Id.* ¶ 35. Aureon audited the bills for all of the carriers using the CEA network, and proactively contacted them to inform them of any errors. *Id.*

AT&T's suggestion that Aureon has engaged in improper jurisdictional shifting of traffic is simply without merit. Changes to the PIU factor in Aureon's tariff filings were, in fact, due to more accurate classification of the traffic allocations. *Id.* ¶ 37. It was unnecessary for Aureon to bring this to the FCC's attention because the condition in Paragraph 32 of the *FCC 214 Order*, i.e., that the state agencies approve the mandatory use policy for intrastate traffic, had been met as required by the Commission. Aureon's interstate PIU factors used for its tariff filings are based on the best available information that it has regarding the traffic on the CEA network, and Aureon's CEA interstate tariff rate takes that information into account. *Id.*

E. Aureon's Traffic Forecasts are Reliable Given the Information Aureon had at the Time the Forecasts Were Made.

AT&T attacks the reliability of the traffic forecasts used by Aureon to develop its CEA rates, stating that there is "a great deal of variation from year to year" in Aureon's test period traffic forecasts. AT&T Legal Analysis at 60. Forecasting traffic over a long time period is difficult, particularly when Aureon has no control over the traffic sent by other carriers over its network. J. Schill Decl. ¶ 37. Aureon developed a model in a good faith attempt to forecast the amount of

intrastate and interstate traffic Aureon expects in the future. *Id.* However, there are variables that Aureon cannot control, and over which Aureon has no control. *Id.*

The test period forecasts of traffic volume in the cost support for Aureon's tariff filings has varied due to fluctuations in access stimulation traffic. *Id.* ¶ 38. Because Aureon is not involved in access stimulation, has no involvement with call aggregators, and does not have any revenue sharing or any other such agreements with any entities, it is difficult for Aureon to predict how much call aggregation traffic will be routed over the CEA network. *Id.* Aureon does not have any insight into the long term plans of other carriers, which may include direct connections with terminating providers and bypassing the Aureon network altogether, which will have an impact on Aureon's traffic forecasts. *Id.*

It is important to note that Aureon's traffic forecasts are actually more accurate than AT&T suggests. In his analysis, Mr. Rhinehart omits the percent difference between the projected demand and actual demand for each test period, which is a more meaningful comparison since the total number of minutes of traffic varies from year to year. *Id.* ¶ 39. For the test periods examined by Mr. Rhinehart, the actual demand in all but two test periods were within 10% of traffic forecasts, and three test periods were within approximately 5-6% of traffic forecasts. *Id.* ¶ 40.

It is important to note that the traffic demand is just one element that goes into determining the CEA rate. *Id.* ¶ 41. Ultimately, setting aside the issue of whether Aureon's rate is deemed lawful under Section 204(a)(3) of the Act, and therefore reasonable,[162] whether Aureon's rate is reasonable turns on whether the Access Division experienced a return that exceeded the FCC's maximum authorized rate of return. J. Schill Decl. ¶ 41. AT&T has failed to fully pay Aureon's CEA invoices for services provided since August 2013. *Id.* During that time period, as shown in

[162] 47 U.S.C. § 204(a)(3).

the table below, Aureon earned less than the FCC's maximum authorized rate of return of 11.5%, and less than the FCC's target rate of return of 11.25%. *Id.*

AT&T further states that Aureon's recent forecasts show declining demand, while AT&T's traffic on the CEA network is increasing, thus suggesting that AT&T's traffic represents the majority of total CEA minutes of use, and that AT&T's traffic has a direct correlation to traffic demand for the CEA network. The increase in AT&T's traffic sent to the CEA network is likely the result of AT&T acting as the intermediate carrier for other IXCs. *Id.* ¶ 42. The traffic of some large IXCs have virtually disappeared from Aureon's network. *Id.* The only logical explanation for this occurrence is that such traffic is being sent to Aureon through other carriers, such as AT&T. *Id.* However, once that traffic is commingled with AT&T's own traffic, Aureon does not have the ability to distinguish between AT&T's traffic, and the traffic that AT&T's is transiting for other IXCs. *Id.* While the volume of traffic that AT&T sends for its own end user customers and for other IXCs is increasing, Aureon's models are forecasting an overall decline in traffic carried over the CEA network. *Id.*

F. Aureon's Inclusion of Uncollectible Revenues in its Revenue Requirement is Appropriate.

The last "area of concern" raised by AT&T involves Aureon's inclusion of uncollectible revenues in its revenue requirement. AT&T Legal Analysis at 61-62. While AT&T witness Mr. Rhinehart faults Aureon for including uncollectible revenues in its revenue requirement, he makes no effort to reconcile the fact that these revenues were part of Aureon's revenue requirement in the past, and Aureon has not been paid for services already rendered. J. Schill Decl. ¶ 43.

The uncollectible revenues represent amounts that Aureon properly billed for CEA service provided under its CEA tariff to other carriers. *Id.* ¶ 44. Uncollectible revenues are a known direct cost, i.e., a reduction in net operating income, of providing CEA service. *Id.* As such, Aureon

properly included the cost of uncollectible revenues in its cost studies as those revenues directly relate to the forecast minutes-of-use that are also used in those studies. *Id.*

It is important to note that AT&T admits that uncollected accounts receivable can be included in the regulated revenue requirement for CEA services if those amounts were properly billed. *Id.* In its Legal Analysis, AT&T cites the *Annual 1988 Access Tariff Filings*, wherein the Commission stated that "[u]ncollectible revenues *are* included in the interstate revenue requirements to reflect properly billed revenues which cannot be collected."[163] As there is no dispute between Aureon and AT&T that the rates Aureon billed AT&T were the same rates that are contained in Aureon's tariff, the amounts that have been billed and not paid by AT&T and other CEA service customers were properly billed and includable in the regulated revenue requirement. J. Schill Decl. ¶ 44. Furthermore, [**[BEGIN HIGHLY CONFIDENTIAL]]** [redacted] **[[END HIGHLY CONFIDENTIAL]]**[164] Accordingly, the inclusion of "Uncollectible Revenues" in Aureon's revenue requirement does not have the potential effect of inflating Aureon's CEA service rate. J. Schill Decl. ¶ 44.

AT&T states that by including uncollectible revenues in its cost studies, Aureon is effectively requiring its other CEA customers to pay for services provided to non-paying IXCs. AT&T Legal Analysis at 62. The same can be said of AT&T. *Id.* ¶ 46. In recent years, AT&T has become a primary cause of the bad debt reserve as AT&T has refused to fully pay for CEA service Aureon properly billed under its CEA tariff. *Id.*

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[163] AT&T Legal Analysis at 61 (quoting *Annual 1988 Access Tariff Filings*, Memorandum Opinion and Order, 3 FCC Rcd. 1281, 1310-11, ¶ 245 (1987)) (other citations omitted).

[164] *See* Ex. 56, Letter from James U. Troup & Tony S. Lee, Counsel for Aureon, to Michael J. Hunseder & James F. Bendernagel, Counsel for AT&T, at 2 (dated Mar. 23, 2017).

G. Aureon's CEA Rate is Reasonable.

Contrary to AT&T's assertions, Aureon's CEA rate is reasonable. Any comparisons that AT&T attempts to make between Aureon's CEA service, and access service provided by LECs, are misplaced because an individual LEC's access service is not CEA service. CEA service provides IXCs with traffic concentration and distribution of calls to the rural exchanges of more than 200 LECs by making available more than 2,700 miles of transport facilities and two access tandem switches at a single interstate CEA rate. *Id*. ¶ 47. The CEA tariff rate reflects the costs and value associated with a CEA network with redundant access tandems, signaling systems and databases, and a fiber network spanning more than 2,700 miles to hundreds of local exchanges. *Id.*

The allocation of costs by Aureon to the Access Division have been performed in accordance with Section 61.38 and Parts 32, 36, 64, and 69 of the FCC's rules as they apply to dominant carriers. *Id.* ¶ 48. Aureon has properly calculated its CEA revenue requirement and CEA tariff rates using proper accounting methods and in accordance with the Commission's rules. *Id.* Aureon has utilized the same methodology for calculating its revenue requirement that was employed with its original tariff filing, *id*., which the Commission approved after rejecting AT&T's allegation that the cost support was insufficient.[165] To the extent that there have been changes in the PIU factors used in Aureon's traffic studies over the years, that is due to the nature of the traffic sent to the CEA network by the IXCs that use Aureon's CEA service, and not as a result of any manipulation of the traffic jurisdictions by Aureon. J. Schill Decl. ¶ 48. As previously explained, Aureon upgraded its switches in 2007, which enabled Aureon to more accurately

[165] *1988 INAD Tariff Order*, 4 FCC Rcd. at 3947, ¶¶ 4, 9-10.

identify whether calls were interstate or intrastate. That information is taken into account in Aureon's PIU and cost studies in order to develop the CEA rate billed to IXCs. *Id.*

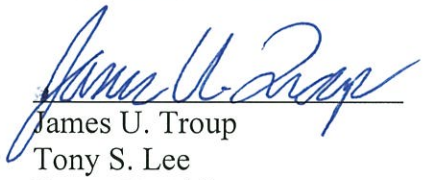
To the extent that there is any manipulation of traffic that is occurring on the CEA network, it appears that AT&T is likely involved in those activities. While Aureon's models indicate that the overall volume of traffic on the CEA network is projected to decline, AT&T nevertheless states that the traffic it is sending to the CEA network is increasing. Given that CEA traffic for some of the large IXCs has significantly declined or disappeared altogether, it appears that AT&T may be engaging in a form of arbitrage where AT&T acts as an intermediate carrier for other IXCs and is paid by those IXCs, while at the same time, AT&T extracts an effective lower rate for CEA service provided by Aureon by not fully paying Aureon's invoices. *Id.* ¶ 49.

VIII. CONCLUSION

In authorizing Aureon to provide CEA service to bring advanced services and long distance competition to rural Iowa, the FCC implemented a mandatory terminating use requirement so that there would be an affordable CEA rate for AT&T's smaller competitors. By withholding payment to Aureon and through the misleading intimidation of CEA subtending LECs, AT&T has violated the Commission's CEA mandatory use requirement, and engaged in a concerted effort to undermine and dismantle the entire competitive landscape for long distance services in rural Iowa. AT&T's refusal to pay Aureon's invoices for CEA service provided pursuant to Aureon's deemed lawful tariff, and the removal of billions of minutes from Aureon's network, adversely affects Aureon's ability to provide affordable CEA service to all of Aureon's IXC customers. The solution to AT&T's complaint that the CEA rate is too high is to enforce payment of the CEA tariff rate and the Commission's CEA mandatory terminating use requirement. Additional revenues and minutes-of-use will result in a lower CEA rate for all IXCs through the application of the rules set forth in Section 61.38 used to determine Aureon's tariff rate. Accordingly, for the foregoing

reasons, Aureon requests that the Commission deny AT&T's Formal Complaint, and find in favor of Aureon as set forth in its Answer.

Respectfully submitted,



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Dated: June 28, 2017

CERTIFICATE OF SERVICE

I, Monica Gibson-Moore, do hereby certify that on this 28th day of June, 2017, copies of the foregoing Legal Analysis of Iowa Network Services, Inc. d/b/a Aureon Network Services were sent to the following:

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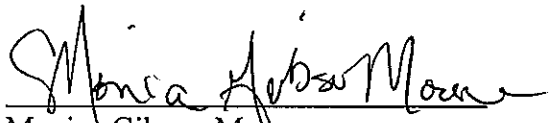

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Table of Exhibits in Support of
Aureon's Answer to AT&T's Formal Complaint

Ex.	Description
1	Answer and Counterclaims of AT&T Corp., *Iowa Network Services, Inc. v. AT&T Corp.*, No. 14-3439 (D.N.J. Aug. 4, 2014)
2	AT&T Business Service Guide, General Terms and Conditions – Fraud, Abuse, and Misuse of Services
3	AT&T Business Service Guide, General Provisions, GP-10 – Fraud, Abuse and Misuse
4	AT&T Complaint, *AT&T Corp. v. Great Lakes Communications Corp.*, Docket No. 16-170, File No. EB-16-MD-001 (filed Aug. 16, 2016) **[[PUBLIC VERSION]]**
5	AT&T Complaint, *AT&T Corp. v. Great Lakes Communications Corp.*, Docket No. 16-170, File No. EB-16-MD-001 (filed Aug. 16, 2016) (Bates No. ATT-3P-000033) **[[HIGHLY CONFIDENTIAL]]**
6	AT&T, "The IA 7 Pumpers," Chart (AT&T Bates No. ATT-001059) **[[CONFIDENTIAL]]**
7	AT&T Reply Comments in Support of Petition of AT&T Services, Inc. for Forbearance Under 47 U.S.C. § 160(c), WC Docket No. 16-363 (filed Dec. 19, 2016)
8	Aureon's 1989 Tariff Filing (filed Apr. 14, 1989)
9	Aureon's 2006 Tariff Filing (filed June 26, 2006)
10	Aureon's 2008 Tariff Filing (filed June 24, 2008)
11	Aureon's 2010 Tariff Filing (filed June 16, 2010)
12	Aureon's 2012 Tariff Filing (filed June 26, 2012)
13	Aureon's 2013 Tariff Filing (filed June 17, 2013)
14	Aureon's 2014 Tariff Filing (filed June 16, 2014)
15	Aureon's 2016 Tariff Filing (filed June 16, 2016)
16	Aureon's 2017 Tariff Filing (filed Apr. 14, 2017)

Ex.	Description
17	Comments of Iowa Network Services, Inc. & South Dakota Network, LLC, *Connect America Fund, et al.*, WC Docket No. 05-337, *et al.* (filed Feb. 24, 2012)
18	Complaint of Iowa Network Services, Inc., *Iowa Network Services, Inc. v. AT&T Corp.*, No. 14-3439 (D.N.J. May 30, 2014)
19	Email from Jared Johnson to Pam Britt (Jan. 23, 2017, 5:34 PM) (Bates No. ATT-000027) **[[CONFIDENTIAL]]**
20	Email from Jean Davis to Lyn Walker (Aug. 17, 2016, 1:51 PM) (Bates No. ATT-001044) **[[CONFIDENTIAL]]**
21	Email from Pam Britt to Chuck Deisbeck (Dec. 14, 2016) (Bates No. ATT-000951) **[[CONFIDENTIAL]]**
22	Email from Pam Britt to Jared Johnson (Dec. 14, 2016, 1:38 PM) (Bates No. ATT-000028) **[[CONFIDENTIAL]]**
23	Email from Pam Britt to Lyn Walker, *et al.* (Bates No. ATT-001048) **[[CONFIDENTIAL]]**
24	Email from Pam Britt to Ryan Boone (Dec. 14, 2016) (Bates No. ATT-000970) **[[CONFIDENTIAL]]**
25	Frank Hilton Declaration, INS' Reply to AT&T's Opposition to Motion for Summary Judgment on Tariff Claims, *Iowa Network Services, Inc. v. AT&T Corp.*, No. 14-3439 (D.N.J. June 8, 2015)
26	*In re Application of Indiana Switch Access Division*, Memorandum Opinion, Order and Certificate, File No. W-P-C-5671 (FCC Apr. 10, 1986)
27	*In re Application of Minnesota Independent Equal Access Corp.*, Memorandum Opinion, Order and Certificate, File No. W-P-C-6400 (FCC Aug. 22, 1990)
28	*In re Iowa Network Access Division*, Final Decision and Order, Docket No. RPU-88-2 (IUB Oct. 18, 1988)
29	*In re Iowa Network Access Division*, Order Granting Rehearing for the Limited Purpose of Modification and Clarification and Denying Intervention, Docket No. RPU-88-2 (IUB Dec. 7, 1988)
30	*In re Exchange of Transit Traffic*, Order Affirming Proposed Decision and Order, Docket No. SPU-00-7 (IUB Mar. 18, 2002)
31	INAD Iowa Tariff No. 1

Ex.	Description
32	INAD Iowa Tariff No. 1, Original Page 42
33	INAD Iowa Tariff No. 1, 1st Revised Page 118
34	INAD Iowa Tariff No. 1, 3rd Revised Page 141
35	INAD Iowa Tariff No. 1, 1st Revised Page 145
36	INAD Iowa Tariff No. 1, Original Page 185
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38	INAD Nebraska P.S.C. Tariff No. 3, Original Page 59
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53	INAD Tariff F.C.C. No. 1, 12th Revised Page 145
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Ex.	Description
55	INAD Tariff F.C.C. No. 1, 1st Revised Page 146.1
56	Letter from James U. Troup & Tony S. Lee, Counsel for Aureon, to Michael J. Hunseder & James F. Bendernagel, Counsel for AT&T (dated Mar. 23, 2017)
57	Letter from Pam Britt, AT&T, to Daniel Bruhn, Premier Communications (July 27, 2016) (Bates No. ATT-000013-14) **[[CONFIDENTIAL]]**
58	Letter from Pam Britt, AT&T, to Deb Ward, Omnitel (July 27, 2016) (Bates No. ATT-000006-07) **[[CONFIDENTIAL]]**
59	Letter from Pam Britt, AT&T, to Missy Hendricks, BTC Inc. (July 27, 2016) (Bates No. ATT-000003-04) **[[CONFIDENTIAL]]**
60	Letter from Pam Britt, AT&T, to Pat Thomas, Louisa Communications (Oct. 24, 2016) (Bates No. ATT-000016-17) **[[CONFIDENTIAL]]**
61	*Northern Valley Communications, LLC v. AT&T Corp.*, No. 1:14-CV-01018-RAL (D.S.D. Aug. 20, 2015)
62	NECA Tariff F.C.C. No. 5, 10th Revised Page 17-10.2.1.2
63	NECA Reporting Guidelines, NRG 4.19 (revised Feb. 2013)
64	Reply Declaration of John W. Habiak, AT&T Reply to the Answer, *AT&T Corp. v. Great Lakes Communications Corp.*, Docket No. 16-170, File No. EB-16-MD-001 (filed Oct. 6, 2016)
65	Traffic Agreement by and between Great Lakes Communication Corp. and Iowa Network Services, Inc., dated July 1, 2005 (Aureon_00091, 00096) **[[HIGHLY CONFIDENTIAL]]**